Jurisdictional Statement

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81-335

No.

In the Supreme Court of the United States

OCTOBER TERM 1981

THE SEA RANCH ASSOCIATION,
a California nonprofit corporation, *et al.*,
Appellants,

vs.

CALIFORNIA COASTAL COMMISSION, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Jurisdictional Statement

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QUESTIONS PRESENTED FOR REVIEW

1. Where a state enacts and applies a law so as to prohibit *all* use of individual homesites, except upon conditions which do not purport to regulate any proposed use of the homesites but instead are designed to coerce the transformation of private beaches into public beaches and the dedication of easements allowing public recreational use of other private land, *all without any compensation,* does the law effect a taking within the meaning of the Just Compensation Clause?

2. May a state constitutionally deny individual lot owners *all* use of their homesites solely in order to coerce a third party (the community homeowners' association) into "consenting" to an uncompensated conversion of private property owned by the third party into public recreational areas?

3. Is the ruling below — that a state law may prohibit all use of private land in order that the state may force the surrender of public recreational easements for the sole benefit of the public—contrary to this Court's holding that the government must pay just compensation to obtain easements (*Kaiser Aetna v. United States* (1979) 444 U.S. 164)?

4. Where a state enacts and applies a law so as to prohibit all use of a legally zoned and subdivided individual homesite, unless and until the individual owner persuades a third party (the community homeowners' association) to grant to the state, without compensation, public recreational rights upon land owned by the third party, does the law interfere with the reasonable investment-backed expectations of the individual homesite owner and constitute a taking of private property for which the state must pay compensation?*

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*The parties to the action are appellants The Sea Ranch Association, Lawrence Corina, Adam Kotowski, Roy E. Berger, Chan-

ning Jones, Jr., Harold Heinrichs, John Palomino, Joseph Picchi, Robert Trefry, and Charles Hoge, and appellees California Coastal Commission, Bradford Lundborg, Naomi Schwartz, Judy Rosener, Richard Wilson, Lois Ewen, Fred Farr, Mildred Benioff, Ruth Andresen, Jeffrey Frautschy, Rimmon Fay, Dorill Wright, Margo Patterson Doss, Richard Golden, Richard Silberman, North Central Coast Regional Commission, Gloria Duncan, Joseph Kiefer, Skip Berg, Eric Koenigshofer, Gary Giacomini, John Molinari, Gregory Jones, Jr., Frank Eggers, Leonard Grote, Phyllis Faber, Ellen Johnck and Natural Resources Defense Council, a corporation.

Appellant The Sea Ranch Association is a California nonprofit membership corporation whose members own lots and condominiums at The Sea Ranch, in Sonoma County, California. The corporation has no parent companies, subsidiaries or affiliates.

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No.

In the Supreme Court of the United States

October Term 1981

The Sea Ranch Association,
a California nonprofit corporation, *et al.*,
Appellants,

vs.

California Coastal Commission, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Northern District of California

Jurisdictional Statement

Appellants, The Sea Ranch Association and several of its individual members, appeal from a final judgment of the United States District Court for the Northern District of California. The California Coastal Act of 1976, as applied, prohibits all use of legally subdivided and individually owned homesites, unless and until third parties consent

to the transformation of their private land into public parkland, without compensation. The three-judge district court held that the California Coastal Act of 1976, as so applied, is constitutional and that the act of the state in thus coercing property owners into giving up their private property rights does not violate the Fifth and Fourteenth Amendments of the Constitution of the United States.

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of California, sitting as a three-judge court, is not reported. It is printed in Appendix A.

The following other opinions were delivered in the courts below but did not reach the merits and are not the subject of this appeal: A prior opinion of the district court abstaining in the case ((N.D.Cal. 1975) 396 F.Supp. 533) is printed in Appendix B; an opinion of the United States Court of Appeals for the Ninth Circuit, affirming the district court's abstention order ((9 Cir. 1976) 537 F.2d 1058), is printed in Appendix C.

JURISDICTION

The action in the court below was brought in 1974 by The Sea Ranch Association and several of its members, seeking declaratory and injunctive relief and contending, inter alia, that the California Coastal Zone Conservation Act of 1972 (Pub.Resources Code, §§ 27000-27650), was unconstitutional in that it took their property for public use without compensation and denied them due process and equal protection. Jurisdiction of the district court was invoked under §§ 1331 and 1343(3) of Title 28 of the United

States Code. A three-judge court was convened pursuant to § 2281 of Title 28, United States Code.[1]

An amended complaint challenged on the same grounds the California Coastal Act of 1976 (Pub.Resources Code, §§ 30000-30900; Appx. F), which replaced the Coastal Zone Conservation Act of 1972, effective January 1, 1977. The California Coastal Act of 1976 provides that appellee California Coastal Commission must require that public access from the nearest public roadway to the shoreline and along the coast be provided in all new development projects within the "coastal zone" (Appx. A, pp. A-4 to A-6; Pub. Resources Code, § 30212, Appx. F, pp. F-47 to F-48).

The three-judge district court dismissed the action on the ground that the California Coastal Act of 1976, as applied, is constitutional (Appx. A). Its judgment was entered on May 21, 1981 (Appx. D). A notice of appeal to this Court was duly filed in the United States District Court for the Northern District of California on June 5, 1981 (Appx. E). By order dated July 14, 1981, Justice William H. Rehnquist extended the time for docketing the appeal to and including August 19, 1981. This Court has jurisdiction of the appeal pursuant to § 1253 of Title 28 of the United States Code.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment, United States Constitution:

"[N]or shall private property be taken for public use, without just compensation."[2]

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1. Section 2281 was repealed by Public Law 94-381, 90 Stat. 1119, but the repeal did not affect actions commenced on or before August 12, 1976.

2. The Fifth Amendment's prohibition applies against the states through the Fourteenth Amendment (*San Diego Gas & Electric Company v. City of San Diego* (1981) ..... U.S. ....., 49 U.S. Law Week 4317, n. 1).

Fourteenth Amendment, United States Constitution:
"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Pertinent provisions of the California Coastal Act of 1976 are printed in Appendix F.

STATEMENT OF THE CASE

Appellant The Sea Ranch Association (hereinafter "Association") is a nonprofit membership corporation whose members own legally subdivided lots at "The Sea Ranch" in Sonoma County on the northern California coast (Appx. B, p. B-19). The Sea Ranch was designed in 1963 as a planned community development of about 5,200 acres (Appx. G, p. G-71).[3]

From 1963 to 1972, Sonoma County issued various developmental approvals regarding The Sea Ranch, including zoning approvals in 1964 and 1968 and an overall plan approval in August 1972 (Appx. G, p. G-71). The county also issued subdivision map approvals, use permit approvals for condominiums, sewage treatment plants and other projects, grading permit approvals where necessary to carry out development plans, and building permit approvals for structures. By 1972, approximately 2,000 residential lots had been legally subdivided, of which about

3. The Sea Ranch lands had been the subject of a Mexican grant to one Ernest Rufus in 1846. Pursuant to the Act of March 3, 1851, "an Act to ascertain and settle the private land claims in the State of California" (9 Stat. 631), private ownership of the tract was confirmed in 1852 by the board of commissioners. The board's decree was affirmed by the district court in 1855 (*United States v. Charles Meyer, et al.* (N.D.Cal. 1855) Case No. 15), and the district court's judgment was affirmed by this Court, with assent of the parties, in December 1859.

1,500 had been sold to individual lot owners.[4] Pursuant to the county zoning and subdivision approvals, approximately 500 owners have built homes on their lots (Appx. G, p. G-72). As a result of the zoning actions of Sonoma County, the residential lots at The Sea Ranch may be used only for residential purposes. Areas within The Sea Ranch not subdivided into residential lots are designated "common areas" (Appx. G, p. G-72). Title to common areas is vested in the Association (Appx. B, p. B-19), for the exclusive use of persons holding beneficial ownership of lots or condominiums at The Sea Ranch (Appx. G, p. G-76).

In 1972, California enacted the Coastal Zone Conservation Act of 1972 (hereinafter "1972 Act"). This act was later replaced by the California Coastal Act of 1976 (Pub. Resources Code, §§ 30000-30900, hereinafter "Coastal Act"), which became effective January 1, 1977, upon expiration of the 1972 Act.

The Coastal Act created the California Coastal Commission (hereinafter "Coastal Commission") and six regional commissions, with authority for implementation of the provisions of the Coastal Act (§ 30300, Appx. F, p. F-49). Of paramount importance here is the requirement in the Coastal Act that all development[5] within the "coastal

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4. The history of zoning and subdivision approvals for The Sea Ranch at various stages prior to November 1972 is set forth in the opinion of the California Court of Appeal in *Oceanic California, Inc. v. North Central Coast Regional Commission* (1976) 63 Cal. App.3d 57, 62-64, certiorari denied and appeal dismissed (1977) 431 U.S. 951.

5. "Development" is broadly defined and includes placing or erecting any solid material or structure, grading, removing any materials, any change in density or intensity of land use, lot splits, construction, reconstruction, or demolition of any structure, and the removal or harvesting of major vegetation (§ 30106, Appx. F., pp. F-45 to F-46). "Structure" includes buildings, roads, pipes, conduits and telephone and electric power lines (ibid.).

zone"[6] (embracing most of The Sea Ranch) be pursuant to a coastal development permit to be obtained from the Coastal Commission or the appropriate regional commission (§§ 30600-30601, Appx. F, pp. F-49 to F-51).

The state and regional commissions are to "[m]aximize public access to and along the coast * * * consistent with * * * constitutionally protected rights of private property owners" (§ 30001.5(c), Appx. F, p. F-44). The state and regional commissions have the power to implement these public access goals through their permitting powers (§ 30600, Appx. F, pp. F-49 to F-50). All development in the coastal zone is subject to review by the commissions, which may impose "reasonable terms and conditions" to ensure compliance with the policies of the Coastal Act (§ 30607, Appx. F, p. F-51).[7]

Pursuant to the Coastal Act, the Coastal Commission adopted a set of "overall conditions" to be appended to all coastal permits issued for home construction at The Sea Ranch.[8] Under the overall conditions, individual coastal

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6. "Coastal zone" is defined in the statute as the land and water area of the State of California from the Oregon border to the border of Mexico (subject to certain exceptions), extending seaward to the state's outer limit of jurisdiction (including all offshore islands) and extending inland generally 1,000 yards from the mean high-tide line of the sea (§ 30103, Appx. F, pp. F-44 to F-45).

7. The California Court of Appeal has held that The Sea Ranch is not exempt from the development permit requirements of the Coastal Act or its predecessor, the 1972 Act, despite the fact that Sonoma County had issued various subdivision and zoning approvals prior to 1972 (*Oceanic California, Inc. v. North Central Coast Regional Commission* (1976) 63 Cal.App.3d 57, certiorari denied and appeal dismissed (1977) 431 U.S. 951).

8. The "overall conditions" have been amended from time to time. The final version of the "overall conditions," which was the subject of the ruling below, is printed in Appendix G. As of the time of the hearing in the court below, the challenged conditions had been attached to 32 permits issued pursuant to the Coastal Act.

permits are nominally approved, but in fact no building is allowed to occur at The Sea Ranch until the overall conditions are fully satisfied (Appx. G, p. G-52). Because the residential lots at The Sea Ranch may be used only for residential purposes, individual owners of undeveloped lots at The Sea Ranch are denied *all* use of their lots unless and until the overall conditions are met by the Association.

Among the conditions which the Coastal Commission has required to be satisfied before individual owners may use their lots is that the Association grant to the state without compensation numerous easements across Association-owned land (common area) for public recreational use and public parking (Appx. G, pp. G-53 to G-57). The easements so demanded would transform private beaches into public beaches—i.e., "allow the public to walk, sit, swim, fish and otherwise use" Association-owned property at six specified beaches (Appx. G, pp. G-53 to G-54)—and would create public pedestrian walkways across private land from the nearest roadway to those beaches (id., pp. G-55 to G-57), a public pedestrian easement along 2.7 miles of private bluff-top overlooking the ocean (id., p. G-56), several parking areas with accompanying access roads (id., pp. G-56 to G-57), and a "bicycle trail" throughout The Sea Ranch, a distance of about 10 miles (id., p. G-57). The Association must also remove approximately 2,500 trees which are growing on its land (id., pp. G-57 to G-60).[9]

In 1974, appellants commenced this action in the district court challenging on Federal constitutional grounds the

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9. Further dedication of trails and parking areas is required from Oceanic California Inc., The Sea Ranch developer (Appx. G, pp. G-54 to G-55).

1972 Act, the predecessor of the Coastal Act (Appx. A, p. A-1). The three-judge court granted a defense motion to abstain but retained jurisdiction over the case pending state court resolution of state issues presented by the complaint (Appx. B, p. B-31). The Court of Appeals for the Ninth Circuit affirmed the order of abstention (Appx. C). Subsequent to the Ninth Circuit's decision, the California Court of Appeal resolved the state issues presented by the complaint (Appx. A, p. A-2). Prior to the decision of the California Court of Appeal, the California Legislature replaced the 1972 Act with the Coastal Act (Appx. F), which is the subject of this appeal.

Appellants filed an amended complaint which alleged that, as applied to them, the Coastal Act is unconstitutional in that it takes their property without just compensation (Appx. A, p. A-2), and which sought declaratory and injunctive relief. The three-judge district court granted summary judgment in favor of appellees and dismissed the action (Appx. A, p. A-17). The district court acknowledged that the development of lots at The Sea Ranch has "no direct nexus" to the conditions imposed under the Coastal Act—the granting of public beaches, public access, public parking, and view easements by the Association (Appx. A, pp. A-9 to A-10). Nevertheless, the district court held that application of the Coastal Act to prohibit all individual development at The Sea Ranch, unless the Association grants to the state those rights in Association-owned lands, does not effect a taking within the meaning of the Just Compensation Clause (Appx. A, pp. A-5 to A-14). On May 21, 1981, the district court entered judgment of dismissal (Appx. D).

THE QUESTIONS ARE SUBSTANTIAL

This case has broad impact beyond the specific context of the California Coastal Act, which applies to the California coast from the Oregon border to Mexico. The decision is of crucial importance to private property owners and state and local governments throughout the country. The ruling below—that a state may prohibit all use of private land in order to compel the granting of easements across *other* property for public use without compensation—in effect gives states carte blanche to destroy individual rights in private property at no cost to the state. The court below has created a dangerous precedent by approving the state's attempt to deny individual lot owners all use of their homesites unless and until a third party (the community homeowners' association) consents to a creation of public recreational rights in private areas totally removed from the individual homesites.

The crux of the ruling below is the district court's erroneous rationalization that "[a]bsent imposition of these [public access and view] conditions ten miles of the California coastline would *become* a private beach with many portions of it cut off from the public's view" (Appx. A, p. A-6; emphasis added). The ruling below totally ignores the critical facts—that the land at issue has been *private property* since 1846 and that the state is free to use its power of eminent domain if the public interest requires recreational areas for public use. The issue thus presented is not whether appellants' land should "become a private beach," but whether private beaches may be made public beaches *without any compensation.*

The court below acknowledged that the proposed building of single-family homes has "no direct nexus" (Appx. A, p. A-10) to the public use conditions imposed by the state as a prerequisite to future home construction at The Sea Ranch. The asserted public need for public beaches and

access to the coast does not arise from the proposed building of homes, and the need for access will remain unaltered whether homes are built at The Sea Ranch or the lots lie vacant. It is the fact that the beaches and the land are privately owned which "creates" the asserted need for public access. In approving the state's prohibition of all use of individual homesites except upon conditions with "no direct nexus" to the proposed use, the ruling below violates the fundamental principle that "[t]he application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests * * * or denies an owner economically viable use of his land" *(Agins v. City of Tiburon* (1980) 447 U.S. 255, 260).

This is not a case where a state is exercising its police power to regulate various uses of private property; rather, the state is imposing public access and recreational requirements to bring about an actual physical invasion of private property. This Court in *Kaiser Aetna v. United States* (1979) 444 U.S. 164 held that the right to exclude the public from private property is "a fundamental element of the property right" (444 U.S. 179-180) and "one of the most essential sticks in the bundle of rights that are commonly characterized as property" (id., p. 176); this right cannot be taken by the government without compensation: "[E]ven if the Government physically invades only an easement in property, it must nonetheless pay just compensation" (id., p. 180).

The constitutional requirement of just compensation is further violated by the fact that use of individually owned homesites is being conditioned upon requirements which are beyond the power of any individual owner to fulfill. The easements required as the quid pro quo for allowing any lot owner to build are not located upon lands belonging to the individual lot owners. The court below, while acknowledging

that an individual lot owner is powerless to fulfill the required conditions, suggested that each owner could lobby other Association members in order to have the Association grant the required easements to the state without compensation. The ruling below thus sanctions threat of a total ban on use of individual lots in order that owners of the hostaged lots will bring pressure upon their Association to surrender private property to the state. Such a blatantly coercive use of state zoning power is without precedent.

A summary dismissal or affirmance by this Court would convert the ruling below into a precedent binding upon all other courts (*Hicks v. Miranda* (1975) 422 U.S. 332, 344-345).

I. The ruling below, that a state law may be applied so as to prohibit all use of private land, except upon conditions unrelated to the proposed use, invites the states to enact and apply laws to circumvent the Just Compensation Clause.

Assuming that the state has a legitimate interest in acquiring public beaches and recreational areas at The Sea Ranch, it has no legitimate interest in doing so without paying the constitutionally required just compensation.[10]

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10. As Justice Holmes pointed out in *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393,

> "The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. • • • When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.
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> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change" (260 U.S. 415-416).

Moreover, the asserted need for public beaches, accessways, and parking does not arise from the proposed building or occupancy of single-family homes at The Sea Ranch. The only "nexus" between proposed construction and the state's demand for public access easements is the state's ability to use the coastal permit system as leverage in its attempt to coerce the dedication of easements without compensation.

The conditions imposed by the state are explicitly intended, as stated by the Coastal Commission in its findings, to "provide for varying public enjoyment and access to the shoreline"; the required blufftop trail "will provide use of another type, enjoyment of the scenic bluff qualities of this area of the shoreline" and *"accommodate those among the public who enjoy shoreline hikes"* (Appx. G, pp. G-76 to G-77; emphasis added). The need for public beaches and for public access arises from the fact that the land along the coast is privately owned, *regardless of any proposed construction on that land.* The specific and express purpose of the requirements imposed by the state is to acquire public rights in land which has until now been private (Appx. G, pp. G-75 to G-76).

The conditions imposed by the state do not even purport to "regulate" the use of the undeveloped lots at The Sea Ranch. Rather, they threaten the owner with loss of all use of his lot—an indisputable taking (*Agins v. City of Tiburon* (1980) 447 U.S. 255, 260). Regulation of the undeveloped homesites is not the end sought by the conditions imposed by the state (Appx. G, pp. G-75 to G-78). It is precisely this fact, that the disputed permit conditions at The Sea Ranch are not designed to regulate use of homesites but to achieve an ulterior purpose, which demonstrates the utter lack of relationship between the proposed use of any lot and the public recreational rights sought by the state. Except for

the extortionate effect on the Association, there is no relationship whatever. To allow the state to acquire public recreational areas along the coast by holding homesites hostage is the antithesis of legitimate constitutional regulation. Zoning laws may regulate a property owner's use of his land, but they may not be used to force an owner to let everyone else use his land, at no cost to them or the government.

No homebuilding on any of the lots at The Sea Ranch will affect public access to the coastline; moreover, many of the lots affected by the construction ban are located above the roadway. Nevertheless, development of all lots within the "coastal zone" at The Sea Ranch, regardless of their location, is prohibited unless private beaches are converted into public beaches and unless public easements are granted to the state (Appx. G, pp. G-52, G-87 to G-88). *Thus, the individual owner of a hilltop lot, deep in the woods on the inland side of the roadway, is deprived of all value or use of his land unless the Association grants to the state rights allowing the public to enter and use private land which may be miles away along the ocean.*

While the court below asserted that failure to implement the challenged conditions "would result in loss of public access" (Appx. A, p. A-10), it failed to come to grips with the fact that not only is there no public access to be "lost," but also that lack of public access is an essential element of private property.

The court below hypothesized that development at The Sea Ranch, "with the likely attendant increase in local population and tourism, will increase the existing need for public access" (Appx. A, p. A-10). This theory simply ignores the facts of this case: the proposed development of single-family homes would not involve "tourism"; more-

over, all residents at The Sea Ranch and their guests already have access throughout The Sea Ranch common areas to the coastline (Appx. G, p. G-76). The sole beneficiary of the property rights demanded by the state is the public.

The ruling below relied upon several California decisions sustaining requirements that land be dedicated for roads or parks as a condition to approval of new subdivisions (Appx. A, pp. A-6 to A-8; *Associated Home Builders v. City of Walnut Creek* (1971) 4 Cal.3d 633; *Ayres v. City Council of Los Angeles* (1949) 34 Cal.2d 31). Here, however, the Coastal Act is being applied to individual lots which were legally subdivided, zoned, and sold to individuals as homesites *before* the adoption of the Coastal Act or its predecessor, the 1972 Act (Appx. G, p. G-71). Under the prior zoning approvals, the lots may be used only as homesites and for no other purpose. While the state decisions relied upon in the ruling below suggest that the state may condition its approval of a proposed subdivision or change in zoning upon a developer's granting of easements or land, those decisions cannot be read to defeat the reasonable investment-backed expectations of individual lot owners who purchased lots already lawfully approved as homesites. Thus, the California decisions relating to conditions imposed upon subdivision developers are not dispositive of the Federal constitutional questions presented here.

Moreover, even assuming that subdivision developers may be required to dedicate land for parks and recreation areas as a condition to approval of new subdivisions, such conditions had *already* been fulfilled by The Sea Ranch developer prior to the enactment of the Coastal Act and its predecessor, the 1972 Act. In 1969, in connection with the Sonoma County approvals, the developer of The Sea Ranch dedicated 120 acres (increased to 150 acres in 1973) at the

northerly end of The Sea Ranch for use as a county regional park, which was accepted by the county in lieu of requiring public corridors through The Sea Ranch.[11] Thus, even after the developer of The Sea Ranch satisfactorily fulfilled Sonoma County's demands for dedication of a park, *in lieu of public easements*, as a condition to zoning and subdivision approvals for The Sea Ranch, the State of California is now demanding still further dedications and is denying the individual lot owners all right to use their lots, as homesites or otherwise, until the new demands are met.

The district court could find no authority which supports its proposition that conditions need not have a direct nexus to proposed development. It erroneously asserted that this Court in *Berman v. Parker* (1954) 348 U.S. 26 "upheld the imposition of conditions to promote aesthetic or scenic considerations as within the regulatory power of state and local agencies" (Appx. A, p. A-9). But this Court held in *Berman* only that "[t]he rights of these property owners are satisfied when they receive that *just compensation* which the Fifth Amendment exacts *as the price of the taking*" (348 U.S. 36; emphasis added).[12]

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11. *Oceanic California, Inc. v. North Central Coast Regional Commission* (1976) 63 Cal.App.3d 57, 63, certiorari denied and appeal dismissed (1977) 431 U.S. 951.

12. The state's demand for view easements also fails to have any direct nexus to proposed development. Appellants do not challenge on this appeal the provisions of the overall conditions imposing height, bulk, and site restrictions or having to do with water supply, septic tanks, or internal roads (Appx. G, pp. G-52 to G-53, G-60 to G-63). But the state has gone far beyond such considerations by prohibiting all development unless the Association grants specified view easements to the state. Even if an individual lot owner seeks to build a home which meets the height, bulk, and site restrictions and which in no way affects views of the coast, he remains prevented from doing so unless and until the Association agrees to cut down trees in the view easement areas of its property which the state demands. Thus, the construction of homes is being conditioned upon granting of view easements wholly unrelated in location or in logic to proposed construction.

II. The ruling below—that a state law may prohibit all use of private land unless easements are granted to the state—is contrary to the decision of this Court in Kaiser Aetna v. United States (1979) 444 U.S. 164.

The ruling below which sanctions application of the Coastal Act to coerce the transformation of private property into public property is contrary to this Court's holdings that the government must pay compensation to acquire easements or to otherwise bring about an actual physical invasion of private property.[13]

In *Kaiser Aetna v. United States* (1979) 444 U.S. 164, this Court held that

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13. The ruling below—insofar as it allows the state to condition home building upon the removal of trees growing on Association land in order to provide the public views of the sea and coastline—is inconsistent with the decision of this Court in *Miller v. Schoene* (1928) 276 U.S. 272. In *Miller*, this Court upheld a state order requiring a landowner to cut down a large number of cedar trees as a means of preventing the communication of a plant disease carried by the cedar trees to apple orchards in the vicinity. This Court held:

> "[T]he state was under the necessity of making a choice between the preservation of one class of property and that of the other wherever both existed in dangerous proximity. • • • [B]y doing nothing, [the state would have] permitted serious injury to the apple orchards within its borders to go unchecked. When forced to such a choice the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public. • • • [W]here the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property" (276 U.S. 279-280).

In contrast to the diseased cedar trees in *Miller*, there is no harm posed by the Association's trees to any other property interest. Here the state is not faced with destruction of an industry; it seeks removal of the Association's trees simply as part of an attempt to acquire a public view easement over the Association's property.

> " 'the right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation. This is not a case in which the Government is exercising its regulatory power in a manner that will cause an insubstantial devaluation of petitioners' private property; rather, the imposition of the navigational servitude in this context will result in an actual physical invasion of the privately owned marina. * * * And even if the Government physically invades only an easement in property, it must nonetheless pay just compensation. * * * Thus, if the Government wishes to make what was formerly Kuapa Pond into a public aquatic park after petitioners have proceeded as far as they have, it may not, without invoking its eminent domain power and paying just compensation, require them to allow free access to the dredged pond" (444 U.S. 179-180; footnote omitted).

And in *Leo Sheep Co. v. United States* (1979) 440 U.S. 668, this Court refused to imply a right in the Federal government to construct a road across private property for public access to a recreational area, because the government has the power of eminent domain. The Court was "unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation" (440 U.S. 687-688; footnote omitted). Thus, the principle that the government must pay just compensation to acquire easements or to transform private land into a public park is fully applicable regardless of the public goals served by the acquisition.

By prohibiting the building of homes unless public recreational rights are granted to the state, the Coastal Act gives appellants a choice between two unconstitutional takings: the Association may choose to continue to exclude the public from its property, in which case individual lot

owners will be denied all use of their lots; or, if the Association chooses to surrender the right to exclude, the state will have succeeded in circumventing the constitutionally required payment of compensation. In either case, appellants will bear the burden of the state's attempt to transform private land into a public recreational area. Such a result is exactly what is forbidden by the Just Compensation Clause, which is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" (*Armstrong v. United States* (1960) 364 U.S. 40, 49).

III. A state's enactment and application of a law prohibiting all use of individually owned lots, except upon conditions which are impossible for the individual lot owners to fulfill, constitutes a taking of private property and requires just compensation under the Fifth and Fourteenth Amendments.

The court below further erred in disregarding the fact that fulfillment of the requirements of the Coastal Act is beyond the power of the individual lot owners to bring about, because the public access, beach, and parking easements sought by the state are located on lands owned not by the individual lot owners but by the Association, a nonprofit membership corporation.

The fact (relied upon by the court below) that the individual lot owners are all voting members of the Association and may lobby other Association members (Appx. A, p. A-12) does not justify a prohibition of *all* use of the undeveloped lots so that their owners will be forced to urge the Association to surrender, without compensation, public easements on common areas held by the Association.[14]

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14. The ruling below relied upon several district court and California decisions sustaining temporary building halts where a local governmental agency has violated sewage regulations (Appx. A, p. A-11, n. 20; *United States v. Douglas County, Nevada* (D.

Regardless of the desirability of acquiring public access across appellants' private property, it violates the rights of individual lot owners to deny them all use of their land unless and until the Association submits to an uncompensated taking of its private property. Under the Coastal Act as applied and upheld here, the only option left open to the individual lot owners is to persuade the Association to forfeit a fundamental element of its property right, "the right to exclude the public" from the Association lands. The ruling below thus sanctions the state's attempt to divide The Sea Ranch membership into two hostile factions: 1) the individual lot owners who have not yet built their homes and who must persuade their neighbors to surrender The Sea Ranch lands for public use; and 2) the 500 individual lot owners who have already built their homes and who have nothing to gain, but a great deal to lose, by allowing the transformation of portions of The Sea Ranch into public parking lots, trails, and beaches (Appx. A, pp. A-12 to A-13; see also Appx. G, p. G-72).

The court below erroneously reasoned that since lot owners at The Sea Ranch "voluntarily entered into" the Association, they "knew, or should have known, at the time they purchased their lots that certain of their actions would

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Nev. 1973) 5 E.R.C. 1577; *Morshead v. California Regional Water Quality Control Board* (1975) 45 Cal.App.3d 442) or where there exist emergency water shortage conditions (Appx. A, p. A-11, n. 20; *Hollister Park Inv. Co. v. Goleta County Water District* (1978) 82 Cal.App.3d 290; *Swanson v. Marin Municipal Water District* (1976) 56 Cal.App.3d 512). Those decisions in no way support the ruling below. The Sea Ranch Association is not a governmental agency, nor is its unwillingness to consent to the taking of easements without compensation violative of any law or regulation. Moreover, the State of California is not faced with any emergency which justifies its demands for the dedication of easements without compensation. In any event, as the court below recognized, the district court and California decisions are not dispositive "since each regulation must be judged on the facts of each particular case" (Appx. A, p. A-11).

be subject to Association approval or action" (Appx. A, p. A-12). This ignores the fact that membership in the Association can hardly be characterized as "voluntary" since, as in many other residential communities,[15] membership in the Association is mandatory for all lot owners at The Sea Ranch (Appx. G, p. G-72). Moreover, to whatever extent the individual lot owners "knowingly purchased their land subject to the covenants of the Sea Ranch Association" (Appx. A, p. A-11), those covenants nowhere suggest that the right to use individual lots as homesites would be dependent upon the Association's willingness to convert its private property into public parkland without compensation.

In forcing individual lot owners who seek to build their homes to lobby other Association members, the state has "interfered with distinct investment-backed expectations" of the lot owners (*Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124). The individual lot owners purchased private property which had been legally zoned and subdivided as individual homesites prior to the enactment of both the Coastal Act and its predecessor, the 1972 Act (Appx. G, p. G-71). Certainly, when they purchased their individual lots, these owners had a reasonable expectancy that their lots could be used as homesites and

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15. In many residential communities, the membership of the community homeowners' or landowners' association consists of all homeowners or landowners in the area. Membership in the association is mandatory in these communities because every lot in the area is subject to recorded covenants, conditions and restrictions requiring all lot owners to be members of the association and to pay membership dues and assessments. Membership in the association cannot be severed from ownership of any individual lot in the area. Such associations with mandatory membership are common in California (*Anthony v. Brea Glenbrook Club* (1976) 58 Cal.App.3d 506, 511 and n. 2).

that the state would not deprive them of such use in order to compel the Association to dedicate additional public parks, accessways and recreation areas without compensation.[16] Contrary to these "reasonable investment backed expectations" (*Kaiser Aetna v. United States* (1979) 444 U.S. 164, 175), the state has tied the use of lots by individual owners to the state's desire to acquire public parklands from the Association without compensation. While the individual lot owners may have had reasonable expectations that certain of their actions, such as the design of their homes, would be subject to Association approval (Appx. A, p. A-12), these expectations did not include the possibility that the state would use the Association's unwillingness to give up its property rights and to donate and entertain public beaches, parking lots, and trails without compensation as a basis for denying use of the homesites altogether.

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16. The reasonable expectations that lots at The Sea Ranch could be used as homesites and that the public could be excluded from The Sea Ranch are unaffected by Article X, Section 4 of the California Constitution, a provision pertaining to access to navigable waters which was relied upon by the court below (Appx. A, p. A-5, n. 8). The lands which are now The Sea Ranch were under private ownership before California became a state in 1850 (see supra, p. 4, n. 3) and before the predecessor of Article X, Section 4, former Article XV, Section 2, was adopted in 1879. Any assertion that the subsequent adoption of these sections could destroy the settled private title to the lands in question would impair the obligation of contracts (U.S. Constitution, Article 1, § 10) as well as deprive the owners of their property in violation of the Fifth and Fourteenth Amendments.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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(Appendices follow)

Appendix A

In the United States District Court
for the Northern District of California

No. C-74 1320

Three Judge Court

THE SEA RANCH ASSOCIATION, a California nonprofit corporation, et al.,

Plaintiffs,

vs.

THE CALIFORNIA COASTAL COMMISSION, et al.,

Defendants.

OPINION

The parties have been here before. In the prior proceeding, *Sea Ranch Association v. California Coastal Commission,* 396 F.Supp 533, aff'd, 537 F.2d 1058 (9th Cir. 1976), plaintiffs challenged the constitutionality of both the permit system and vested rights exemption system under the 1972 California Coastal Zone Conservation Act.[1] This court, although aware of the hardships which could result, chose to abstain and noted: (1) federal judicial action would interfere with the state regulatory scheme; (2) tentative or premature decisions on issues of state law

1. At the time of this court's previous decision, the Coastal Zone Conservation Act of 1972, former California Public Resources Code §§ 27000 *et seq.*, was in effect. The 1972 Act has been superseded by the California Coastal Act of 1976 (California Public Resources Code §§ 30000 *et seq.*). The basic thrust of the environmentally protective policies of the 1972 Act remain unchanged in the 1976 statute. Hereinafter all references to code sections refer to the California Public Resources Code and the 1976 California Coastal Act.

should be avoided when a state court decision might eliminate or minimize the federal constitutional issue(s); and (3) plaintiffs here as well as others were pressing several very similar cases in the state court. The Circuit Court affirmed the abstention "[t]o the extent that the federal complaint alleged a vested rights exemption for the entire Sea Ranch project," but held the complaint should have been dismissed for lack of case or controversy "[t]o the extent [it] alleged vested rights exemptions for individual property owners at the Sea Ranch." *Id.* at 1064.

Subsequent to the Circuit's decision, the California Court of Appeal, in *Oceanic California, Inc. v. The North Central Coast Regional Commission, et al.*, 63 Cal.App.3d 57, 133 Cal.Rptr. 664 (1976), *cert. denied and appeal dismissed*, 431 U.S. 951 (1977), held the developer of Sea Ranch did not have a vested rights exemption to complete the development, without obtaining required permits from the regional coastal commission. This interpretation by the California Court of Appeal foreclosed the claims raised in plaintiffs' federal complaint.

Plaintiffs have now filed an amended complaint which alleges that, as applied to them, the California Coastal Act of 1976 is unconstitutional in that it takes their property for public use without just compensation and denies them due process and equal protection. They seek declaratory and injunctive relief.

Since the parties were last before this court the Coastal Commission has taken final action on 32 permits. These applications have been approved subject to the fulfillment of certain overall conditions developed by the commission with a view toward full build-out at Sea Ranch. These conditions generally relate to (1) water supply, (2) septic tank sys-

tems, (3) internal roadways, (4) site and design limitations, (5) public access, and (6) view easements.[2]

Plaintiffs have moved for partial summary judgment that two of the "final" conditions adopted by the commission—the required public access and view easements—are unconstitutional. Specifically, they urge the conditions constitute a taking of their property without just compensation because (1) no individual lot owner is able to comply with the requirements and (2) the conditions have been imposed without regard to the relationship, or lack thereof, between a particular application and the condition imposed. This court rejects both arguments and finds the challenged conditions valid for the reasons stated below. The defendants moved this court to dismiss or in the alternative to abstain. Matters outside the pleadings having been presented to the court, the motion to dismiss is treated as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 12(b). The court grants summary judgment in favor of defendants.

The United States Supreme Court has held that property may be regulated to a certain extent, but if that regulation goes too far it will be recognized as a taking. *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393 (1922). Land use regulations however, have been upheld as a proper exercise of the police power if they are reasonable and a presumption of reasonableness lies with the state or agency action. *Gold-*

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2. The conditions are set forth in the Sea Ranch Overall Conditions and Findings before this court as the Commissioner's Exhibit C. The court hereby takes judicial notice of these findings. The subdivision wide conditions address, (1) adequacy of the water supply for the Sea Ranch and the diversion of water from nearby rivers, (2) provision for a system for monitoring septic tank installation and use, (3) provision for internal roadways in the development to avoid highway congestion on Highway 1, (4) site and design limitations, (5) the problem of establishing adequate public access to the public tidelands along the ten mile stretch of ocean front adjacent to Sea Ranch, and (6) the problem of preserving coastal views which are threatened by trees planted by Oceanic and the association and maintained by the association.

blatt v. Hempstead, 369 U.S. 590 (1962). The reasonableness of each regulation must be evaluated on the specific facts of each case. *Kaiser Aetna v. United States,* 444 U.S. 164, 175 (1979).[3]

Much of the factual history of this dispute appears in our previous opinion. However, since our inquiry focuses on the reasonableness of the governmental action as it relates to the plaintiffs, this court reviews the goals as well as the authority of the Coastal Commission under the California Coastal Zone Conservation Act before examining the challenged conditions and the methods by which the Commission has chosen to impose them.

Among the duties of the California Coastal Commission is the protection and maintenance of the public's access to and enjoyment of the California coastline.[4] One of the basic goals for the coastal zone is to "maximize public access to and along the coast consistent with . . . constitutionally protected rights of private property owners."[5] Maximum access is to be provided and development is not to interfere with the public's right to access to the sea.[6] Additionally, public access to the sea from the nearest public roadway to the shoreline is to be preserved and provided in new development projects.[7]

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3. *See, Kaiser Aetna v. United States,* 444 U.S. 164 (1980); *Dahl v. City of Palo Alto,* 372 F.Supp. 647 (N.D. Cal. 1974).

4. California Public Resources Code, § 30001.5(c). All subsequent Section references are to the California Public Resources Code. One of the goals of the Commission is to "protect . . . enhance and restore the overall quality of the coastal zone environment." § 30001.5(a). The coastal zone has been declared "a distinct and valuable resource of vital and enduring importance to all the people and exists as a delicately balanced ecosystem." (§ 30001.)

5. § 30001.5(c).

6. § 30210.

7. § 30212.

The Act follows policies set out in the California Constitution[8] which provides that no person claiming or possessing frontage to navigable waters in this state may exclude the public's right of way to such waters when required for any public purpose.[9] Equally relevant to this action are portions of the California Coastal Zone Conservation Act which provide that the scenic and visual quality of the coastline is to be considered and protected as a resource of public importance.[10] Permitted development is to be sited and designed to protect views along the coastline.[11]

The Coastal Commission has been given the power to implement these goals through its permitting power.[12] All development in the coastal zone is subject to review by the Commission which may impose "reasonable terms and conditions" to insure compliance with the policies of the Act.[13]

With these provisions of the Act in mind, this court finds public access and aesthetic considerations constitute areas that legitimately fall within the Commission's regulatory power.[14] The permitting process is the means for the Commission to enforce the power delegated to it. It is clear that the Commission would be in violation of the policies and its duties as spelled out under the Act if it had not

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8. CALIFORNIA CONST. art X, § 4.

9. § 30252.

10. § 30251.

11. *Id.*, Highway 1 is to remain a scenic two-lane highway. § 30254.

12. § 30600.

13. § 30607.

14. The particular conditions challenged here have already been found to be reasonable, to be supported by substantial evidence, and otherwise proper and responsive to the Commission's statutory duty under the Act. *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Com.*, 57 Cal.3d 76, 129 Cal.Rptr. 57 (1976).

formulated or imposed the challenged conditions. Absent imposition of these or similar conditions ten miles of the California coastline would become a private beach with many portions of it cut off from the public's view.

Conditions similar to the ones in the instant case have been upheld by the courts. In *Associated Home Builders v. City of Walnut Creek*, 4 Cal.3d 633, 94 Cal.Rptr. 630, 484 P.2d 606 (1971), the California Supreme Court sustained the constitutionality of a statute authorizing cities and counties to require dedication of land or payment of fees as a condition to approval of a subdivision map. An association of developers and builders challenged the statute and the city ordinance and resolutions enacted thereunder on the grounds that the regulations violated equal protection and due process in that they deprived them of their property without just compensation. The association, like the plaintiffs in this case, argued the state was attempting to avoid the obligation of compensation for public facilities which would be enjoyed by all citizens of the city and only incidentally by subdivision residents. The association contended the future residents of subdivisions would be forced to bear the burden imposed on the subdividers and they would be required to pay for recreational facilities the need for which stemmed not from the development of any one subdivision but from the needs of the community as a whole. In an argument similar to the one advanced by plaintiffs, the association asserted the requirement could only be justified if it was shown that the need for a particular park was directly attributable to the increase in population caused by a particular subdivision.[15]

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15. *Associated Home Builders v. City of Walnut Creek*, 4 Cal.3d 633, 637-38, 94 Cal.Rptr. 630, 634, 484 P.2d 606, 610 (1971).

The California Supreme Court rejected this contention and held the dedication requirement could be upheld without a showing a subdivision directly created a need for it. The court found that in determining whether or not a condition imposed was a reasonable exercise of the police power rather than a taking, the court was not limited to consideration of the actual immediate impact of a particular subdivider or permittee. The court also looked at the "general public need for recreational facilities caused by present and future subdivisions."[16] It reviewed reports indicating statewide concern over open space and public facilities and recent amendments to the state Constitution aimed at providing open space to the public. All of these factors led the court to conclude open space and public facilities for recreation were as important to the public health and welfare as sewers or streets.[17] Additionally, future as well as immediate needs could be taken into consideration in evaluating the dedication requirements. The court was not restricted in its appraisal of the statute to the impact of a particular subdivider nor was it limited to the set of facts as it existed at a particular point in time. The court could consider the overall impact of a particular development and others like it, the needs of the public, now and in the future, even the growing enlightenment about the public's need for aesthetically healthful surroundings and open space.

The association also contended that even if a showing of a direct relationship between a particular subdivision and an increase in the community's recreational needs was not required, subdividers could not be compelled to dedicate land for such needs unless their contribution would primarily benefit their particular subdivision. The court found

16. *Id.* at 634, 484 P.2d at 610.

17. *Id.* at 641, 94 Cal.Rptr. at 636, 484 P.2d at 612.

the conditions were not improper even though they might benefit the city as a whole as much or more than the developers and future residents.

The court's reasoning in upholding the dedication requirements was based in part on the case of *Ayres v. City Council of Los Angeles,* 34 Cal.2d 31, 207 P.2d 1 (1949). In *Ayres* the City of Los Angeles imposed on the developer certain conditions for the development of a residential tract. The challenged conditions included a requirement that he dedicate a strip of land abutting a major thoroughfare bordering one side of the subdivision, but from which there was no access into the subdivision. The subdivider argued that he could be compelled to dedicate land only for streets within the subdivision to ease the flow of traffic therein and that no dedication could be required for additions to existing streets. He asserted that the dedication would be invalid as a taking because the benefit to the lot owners in the tract would be relatively small compared to the benefit to the city at large. The *Ayres* court disagreed for the same reasons outlined above; a subdivider seeking to acquire the advantages of subdivision has a duty to comply with reasonable conditions for dedication so as to conform to the welfare of the lot owners and the general public. The challenged conditions were not improper because their fulfillment benefits the public as a whole, because future as well as immediate needs are taken into consideration, or because potential as well as present population factors affecting a site are considered in the formulation of conditions imposed on the subdivider or permittee.

The *Ayres* court also upheld a condition requiring the developer to preserve a strip of land for the planting of trees and shrubbery. Other courts have approved regulations requiring the planting of trees and shrubbery, and

the preservation of views and open space as valid exercises of the police power. In *Berman v. Parker,* 348 U.S. 26 (1954) the United States Supreme Court sustained a land use project against the owner's claims of an unconstitutional taking. The Court upheld the imposition of conditions to promote aesthetic or scenic considerations as within the regulatory power of state and local agencies. The Court stated:

> The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. 348 U.S. at 33.

This court, in a prior case, has rejected constitutional challenges to a zoning ordinance aimed at preserving the aesthetics of a community through placement of underground utilities and plantings. The court upheld such an ordinance in *Confederacion de la Raza Unida v. City of Morgan Hill,* 324 F.Supp. 895 (N.D. Cal. 1971) and went on to note the "by now well-recognized right of the local authorities in zoning matters, . . . to take esthetic considerations into account." *Id.* at 898.

These cases indicate planning bodies may condition development on aesthetic considerations or dedications of property for public recreational facilities or access.[18] The fact

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18. The court in *Ayres* noted that the concept of what falls within the health and welfare of the public and the ambit of the police power is a changing one; "*In Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365 at 387 (1926) it was observed that regulations, the wisdom, necessity and validity of which as applied to existing conditions were so apparent that they are now uniformly sustained, would probably have been rejected as arbitrary and oppressive a century or even a half a century ago; that while the meaning of constitutional guaranties is invariable, the scope of

that the development has no direct nexus to the condition, that the benefit to the public is greater than to the developer, or that future needs are taken into consideration, does not destroy the validity of the condition. The court is free to look to these factors, as well as the general goals behind the authorizing statute, in evaluating the reasonableness of the regulation.

Applying these standards to the instant case it is clear that the challenged conditions must stand. The public need for access to state beaches on foot or visually and the importance the people of California place on that need have been embodied in the California Coastal Zone Conservation Act. The Act spelled out the need to maximize public access and views. As we noted earlier, failure to implement these conditions would result in loss of public access and views on a substantial portion of the northern California coastline. Moreover, the gradual build-out at Sea Ranch, and like developments in the region, with the likely attendant increase in local population and tourism, will increase the existing need for public access.

The court finds the tree trimming and public access conditions are valid conditions within the ambit of the Commission's regulatory power.[19] This, however, does not

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their application must expand or contract to meet the physical changes which are constantly coming within the field of their operation; and that only those regulations must fall which clearly do not meet the constitutional meaning as applied to changing conditions." *Ayres v. City Council of Los Angeles,* 34 Cal.2d 31, at 43, 207 P.2d 1 at 8 (1949).

19. *See* note 14, *supra.* We note these are continuing obligations. We do not consider the question of the California Coastal Commission's ability to enforce these continuing obligations once permits have been granted and homes have been built. The question of continuing enforcement is not before us and will present different issues from those now at bar.

lay this case to rest. The real crux of this dispute is not the conditions, but the method or manner through which the Commission seeks to have its policies and conditions enforced. Plaintiffs claim the conditions are invalid since it is impossible for any individual landowner to comply; he cannot acquiesce on his own, but must seek association compliance. Furthermore, the conditions are not to be carried out on land that is his to dedicate or control, but on association land.

We reject this argument as a basis for invalidating the Commission's regulations. Numerous courts have upheld regulations which impose conditions upon development of individual property although those conditions required action by third parties beyond the individual's exclusive control.[20] We do not examine them in detail since each regulation must be judged on the facts of each particular case.

Plaintiffs would invite this court to ignore the specific facts of this case; specifically that they are part of the Sea Ranch Development, the Sea Ranch Association, and that they knowingly purchased their land subject to the covenants of the Sea Ranch Association.[21] The plaintiffs want

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20. *See, e.g., U.S. v. Douglas County, Nevada,* 5 E.R.C. 1577 (U.S.D.C. Nev. 1973); *Morshead v. California Regional Water Quality Control Board,* 45 Cal.App.3d 442, 119 Cal.Rptr. 586 (1975); *Swanson v. Marin Mun. Water District,* 56 Cal.App.3d 512, 128 Cal.Rptr. 485 (1976); and *Hollister Park Inv. Co. v. Goleta County Water District,* 82 Cal.App.3d 290, 147 Cal.Rptr. 91 (1978).

21. Pursuant to Rule 201, Federal Rules of Evidence, the court takes judicial notice of the declaration of restrictions, covenants and conditions known as "The Sea Ranch Restrictions," which were recorded in the Office of the Recorder, County of Sonoma, on May 10, 1965, in Book 2127 of Official Records at page 237, as amended by the Certificates of Amendment recorded on October 14, 1969, in Book 2422 of Official Records at page 567, and on September 16, 1971, in Book 2565 of Official Records at page 510.

to be treated as individual lot owners. However, this court can only assume that they were all aware at the time of their individual purchases that they were buying more than an individual lot on the California coast. They were also buying into the development, specifically the association with all the attendant rights and responsibilities that go with association membership, i.e., voting rights,[22] association provision for police and garbage facilities,[23] design and site approvals from the association,[24] and association ownership and control of the common areas within the development.[25]

Plaintiffs would have this court ignore the particular style of ownership the plaintiffs have voluntarily entered into. Plaintiffs knew, or should have known, at the time they purchased their lots that certain of their actions would be subject to Association approval or action. They cannot voluntarily restrict their land to a single use and bind themselves to the Sea Ranch Association and its covenants only to later assert a taking when the Coastal Commission attempts to deal with them in part through that entity. We consider them as members of the Sea Ranch Association, which is an overall development of a substantial area of the northern California coast and a pseudo governmental entity capable of managing that body of land. The individual lot owners are not powerless to affect compliance with the overall conditions. The plaintiffs, as landowners, all have a vote in the association. Additionally, they like any other voter, have the right to lobby neighbors and association members. Significantly, it appears that the

22. Sea Ranch Restrictions 5.03.

23. Sea Ranch Restrictions 5.04(g).

24. Sea Ranch Restrictions 4.01-07.

25. Sea Ranch Restrictions 5.05(d), 9.05(a) and (4).

number of lot owners who have not yet built or received building permits substantially outnumbers the lot owners who have built. Thus, if the lot owners seeking permits, instead of fighting the Commission, co-operate to have the Association carry out the conditions imposed by the Commission, those conditions can in fact be carried out. To follow plaintiffs' course and ignore the Sea Ranch development and the Sea Ranch Association as a whole would invite landowners in the future to engage in complicated forms of ownership to avoid government regulations.

We find it is not impossible for the plaintiffs to comply with the conditions imposed upon them. Equally important, during the period of its stewardship, the Coastal Commission need not grant any building permit where development would be inconsistent with the objectives of the Act. Indeed, the Act contains something of a bias against further development during this interim period before local coastal programs have been prepared. Because of the temporary nature of its authority, a flat prohibition by the Commission on a coastal development project does not amount to a taking. *Kopetzke v. County of San Mateo,* 396 F.Supp. 1004, 1009 (N.D. Cal. 1975); *State of California v. Superior Court,* 12 Cal.3d 237, 252-255, 115 Cal.Rptr. 497, 506-509, 524 P.2d 1281, 1290-1293 (1974). Certainly if the denial of a permit would be permissible, the grant of a permit on reasonable conditions must be permissible as well.

And if the conditional permits do not work a taking of the individual lot owner's property, it follows that neither do they threaten a taking of the Association's property. Should the Association agree to the conditions, it will benefit a substantial portion of its membership. Should it refuse to do so—as it is free to do—it will be made a party

to a temporary standstill in coastal development but not to a taking of any lot owner's property. We need not decide now whether the indefinite or permanent imposition of these conditions would work a taking of an individual lot owner's property or that of the Association. In short, neither the conditions nor the method the Coastal Commission has chosen to enforce them are impermissible. The conditions are a necessary and reasonable way for the Coastal Commission to deal with the problems of preserving public views and access to the coastline while allowing building and growth at the Sea Ranch, now and in the future.

The plaintiffs moved for partial summary judgment on only two of the six overall conditions imposed by the Coastal Commission. Defendant Coastal Commission urged that this court avoid piecemeal litigation and either abstain or consider the validity of all the conditions. In the interest of avoiding piecemeal litigation and, even more important, in the interest of ending any future uncertainty in this long, hard-fought and difficult dispute, we also sustain the validity of the four remaining conditions. These conditions were listed at the beginning of this opinion. They are aimed at providing and maintaining adequate water supplies and water quality, monitoring sewage treatment, providing internal roadways to ease the impact of increased traffic on Highway 1, and site and design limitations aimed at preventing erosion and protecting the scenic beauty of the area.

Plaintiffs' own memo in support of the motion for partial summary judgment recognized that these types of regulations fit more readily into the traditional definitions of an appropriate exercise of the police power.[26] Water supplies.

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26. Plaintiffs' Brief in support of the motion for partial summary judgment indicates a judgment on the access and tree conditions "may encourage the parties to resolve, in the context of

water quality, and sewage treatment have long been recognized as vital to the public's health and welfare.[27] Regulation of these areas have been upheld by the courts as a valid exercise of the police power even though the harm to the individual is substantial and use of his land is severely limited.[28] Regulations calling for dedication of internal roadways in developments to ease traffic congestion have also been approved,[29] as have those dealing with siting and design limitations aimed at preserving open space or the scenic quality of an area.[30] Moreover, this court takes judicial notice of the decision of the California Court of Appeal in *Natural Resources, etc. v. California Coastal Zone, etc.*, 57 Cal.App.3d 76, 129 Cal.Rptr. 57 (1976). In that case, brought by the Natural Resources Defense Council, the Court of Appeal was asked to review the decision of the Coastal Zone Conservation Commission to issue building permits for 15 homes at the Sea Ranch. The court considered several issues, among them the validity of the conditions placed by the Commission on the issuance of the permits. The court considered the evidence adduced at the Commission's hearings that indicated the conditions were

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this litigation, the remaining issues relative to the other four conditions." We recognize, however, that plaintiffs contemplated judgment in their favor.

27. *Miller v. Board of Public Works of City of Los Angeles*, 195 Cal. 477, 234 P. 381 (1925) (upholding ordinance requiring installations of water lines at developer expense); *Morshead v. California Regional Quality Board*, 45 Cal.App.3d 442, 119 Cal. Rptr. 586 (1975).

28. *See* cases cited in note 20, *supra*.

29. *Ayres v. City Council of Los Angeles*, 34 Cal.2d 31, 207 P.2d 1 (1949).

30. *Agins v. City of Tiburon*, 157 Cal.Rptr. 372, 598 P.2d 25 (1979) ..... U.S. ....., 100 S.Ct. 2138 (1980).

needed to meet the demands the build-out at Sea Ranch would make upon the area.[31] The court found the conditions to be "reasonable, to be supported by substantial evidence, and otherwise to be proper and responsive to the Com-

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31. The court noted that substantial buildout at Sea Ranch would have serious environmental effects:

"No integrated sewage system was planned for the subdivision; in its place septic tanks were to be used. The water supply was from a well on the banks of the Gualala River. The subdivision straddled state Highway 1, but the greater number of its lots were to the seaward. The highway, which roughly paralleled the ocean shore, was the only means of reaching the property. It was a narrow, winding 'rural' road with but one lane in each direction. Alongside it were planted trees which tended to obscure a traveler's ocean view as he passed through the subdivision.

Evidence adduced at the Commission's hearing indicated that reliance upon septic tanks in subdivisions of the size and density of Sea Ranch was 'to invite trouble.' Even under the best of conditions they were said to sometimes fail, contaminating streams and ground water, and generally constituting a health hazard and a threat to the environment. . . .

The probable congestion of traffic on Highway 1 was the subject of the following expert testimony. Already the road 'peaked' at 280 vehicles per hour on summer weekends. . . . When traffic flows approach a two-way flow of around 400 vehicles per hour the chances of finding a safe passing situation are lost and drivers become 'trapped.' . . .Sea Ranch, at full build-out, could be expected to increase the peak periods to substantially more than 400 vehicles per hour. The Commission had considered the cost and effect of improving the highway; it found: 'Major highway construction in the area would be enormously expensive both in dollar and environmental terms. . . .And substantial improvement to the highway could require large cuts and fills along this scenic route, and could change the coastal experience from one of driving on an essentially rural road to one of driving on a much more urban roadway.'

Other evidence indicated that little had been done by the subdivider to allow public access through the property to the beaches, and that diversion of water to the subdivision from the well near the Gualala River could unduly jeopardize fish life in, and the flow of, the river." 57 Cal.App.3d at 84-86, 129 Cal.Rptr. at 62-63.

mission's statutory duty under section 27403."[32] This court agrees. Our ruling is based on the Court of Appeal findings and in part on our own review of the record before us.

Since we previously found the method of enforcing compliance with these conditions to be valid, and now find the remaining conditions valid, plaintiffs have no further basis for a claim before this court. Accordingly, summary judgment is hereby ordered in favor of the defendants and the case is dismissed. Each party to bear its own costs.

DATED: - 7 APR 1981

IT IS SO ORDERED.

BEN. C. DUNIWAY
United States Circuit Judge

WILLIAM G. EAST
United States District Judge

SPENCER WILLIAMS
United States District Judge

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32. *Id.* at 92, 129 Cal.Rptr. at 67.

Appendix B

THE SEA RANCH ASSOCIATION, etc., et al.,
Plaintiffs,

v.

THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION, et al.,
Defendants.

No. C-74-1320 SW.

United States District Court,
N. D. California.

Jan. 13, 1975.

OPINION

Before DUNIWAY, Circuit Judge, and EAST and WILLIAMS District Judges.

DAVID W. WILLIAMS [sic], District Judge:

STATEMENT OF FACTS

In November 1972, the Citizens of California passed the Coastal Zone Conservation Act by means of the initiative process. The Act is designed to preserve the "remaining natural and scenic resources of the coastal zone." California Public Resources Code, Sec. 27001.[1] The Act established a state commission and six regional commissions charged with the preparation of a land use plan for the California coastal zone and the control of further development in the coastal region pending completion of the plan. The Act states that this plan is to be completed by December 1975 and submitted to the state legislature for approval in 1976.

1. All susequent Section references are to the California Public Resources Code.

The entire Act terminates 91 days after the adjournment of the 1976 California state legislature. Sec. 27650.

The provisions of the Act which are designed to control development during this interim period require that any person "wishing to perform any development" in the coastal region during this term must first obtain a permit from the appropriate regional commission. Sec. 27400.

It is this permit procedure which forms the controversy of this case.

Plaintiffs are eleven individual property owners at the Sea Ranch coastal development in Sonoma County and the Sea Ranch Association, a non-profit corporation representing all property owners at Sea Ranch. The Sea Ranch development is a vacation-home subdivision of single family residences. The Sea Ranch Association provides various services to member owners and holds title to a substantial amount of common-property area. At the time of the passage of the Coastal Zone Act, the Sea Ranch development was still under construction, some residences substantially completed, some under construction, and many not yet begun.

Pursuant to the Act, the state commission on June 19, 1974 granted the property owner plaintiffs permits to develop their property subject to certain conditions. The state commission's decision was made upon an appeal from a similar decision by the North Central Regional Commission.

The principal conditions required plaintiffs to:

1. Thin and trim trees planted by the developer which interefered with ocean views;

2. Develop a system of public access along the Sea Ranch development coastline;

3. Institute a program to monitor the cumulative effects of Sea Ranch development septic tanks; and

4. Initiate and carry out a program to monitor the effects of Sea Ranch development water diversions on the water flow and fish life in the Gualala River.

The state commission stated that in the event that the Sea Ranch Association would not agree to implement these conditions, an individual applicant could begin construction by depositing $1500 into an account to be established by the regional commission. The funds would be used by the regional commission to "mitigate the environmental problems" which were the subject of the conditions.

Plaintiffs dissatisfied with the state commission's decision filed this suit on June 21, 1974 challenging specific provisions of the Coastal Act as unconstitutional and also attacking the decisions of the commissions as in excess of their constitutional authority.[2] Plaintiffs bring their suit under 42 U.S.C. § 1983, the federal civil rights act and name as defendants the state and regional commissions, their individual members, the Natural Resources Defense Council (NRDC), the California Coastal Alliance (CCA), and the Sierra Club.

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2. Plaintiffs assert that the following provisions of the Act violate due process:

a. The requirement of a two-thirds affirmative vote by the commissions for developments which "interfere with the line of sight, adversely affect water quality or open water free of visible structures" [Sec. 27401].

b. The imposition on applicants of the burden of proof as to all issues [Sec. 27402].

c. The requirement of dedication of access to publicly-owned or used beaches [Sec. 27403(a)].

d. The authority to place conditions on permits for "adequate and properly located public recreation areas" [Sec. 27403(b)] and "solid and liquid waste treatment, disposition, and management" [Sec. 27403(c)].

e. The definition of "vested rights" to the extent it is more restrictive than the due process clause of the 14th Amendment permits [Sec. 27404].

Plaintiffs' attack on the action of the commission is primarily focused on the imposition of the specified conditions, and is couched in terms of due process and equal protection.

Defendants NRDC and CCA have also taken issue with the decisions rendered by the commissions and on July 8, 1974, filed a petition for writ of mandate in state Superior Court seeking judicial review of the commission's decision.

The parties have five separate motions before the Court: Plaintiffs have moved to enjoin NRDC and CCA's state court action, to enjoin the commission's requirement of a $1500 deposit in lieu of certain permit conditions, and to reconsider a previously invoked stay of discovery. Defendant, coastal commission, moves to dismiss or abstain; and Defendant NRDC moves to dismiss or abstain.

[1] After extensive oral argument and briefing it became evident that the crux of the constitutional challenge which caused this Court to be convened in the first place[3] is whether constitutional concepts of vested rights and due process preclude the application of the California Coastal Zone Act to plaintiffs at all.[4] Plaintiffs argue that it should

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3. Judge Duniway harbors doubt that this matter is properly before a three-judge court in accordance with 28 U.S.C. § 2281. There is some concern that although the Coastal Zone Act is a state statute, it directly applies to only one percent of the total area of California (that strip of coastal land which extends 1000 yards inland from the mean high tide line). Under the rationale of *Rorick v. Comm'nrs*, 307 U.S. 208, 212, 59 S.Ct. 808, 810, 83 L.Ed. 1242 (1939) (which involved the Florida Everglades of about 4,000,000 acres), where it was held that "... it is now settled doctrine that only a suit involving 'a statute of general application' and not one affecting a 'particular municipality or district' can invoke Section 266 [§ 2281]", it is believed that the statutes herein may not be of general application. The majority of the panel, however, is of the opinion that this is properly a § 2281 case.

4. § 27404 which defines vested rights provides:

> "If prior to • • • November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be

not be applied to them and that to do so would violate their civil rights and deny them due process. Their position is, essentially, that this narrow definition of vested rights ignores a whole raft of common law property rights that may have vested prior to the adoption of the Act. In particular they argue that where, as here, a developer of a planned-unit community and an association of landowners and individual landowners have worked closely with state and local governments in the intricate planning of such a community, have dedicated substantial properties for public use pursuant thereto and have secured approval thereof, the individual landowners have earned vested rights in both the overall development of the community and in the development of their specific lots. Thus, they contend any statute which purports to deny or disregard such vesting violates due process.

[2] They also claim that since this statute is unconstitutional on its face abstention would be inappropriate because there is no room for state interpretation which would save it.[5]

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deemed to have such vested rights if, prior to * * * November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material."

5. Plaintiffs argue that abstention is inappropriate in this case because they have brought this action under the Civil Rights Act, 42 U.S.C § 1983. The Court does not agree. It is true that *McNeese* v. *Board of Education*, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.2d 622 (1963), and the strong dissent in *Harrison* v. *NAACP*, *supra*, have caused some concern about the propriety of abstaining in civil rights suits. But to say, as plaintiffs argue, that *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), has expanded this concern, spawned by cases involving free speech

[3] While a federal court cannot channel federal constitutional issues to state courts merely to avoid a federal decision, *Zwickler* v. *Koota*, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967), the appropriate case for abstention arises when the challenged state statute is susceptible to a construction by the state courts that would avoid or modify the federal constitutional question. *Harrison* v. *NAACP*, 360 U.S. 167, 79 S.Ct. 1025, 3 L.Ed.2d 1152 (1959); *Lake Carriers' Association* v. *MacMullan*, 406 U.S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972).

[4-6] The abstention doctrine rests upon policy considerations of comity and judicial economy. First, abstention is appropriate for the avoidance of unnecessary interference with state regulatory schemes on the premise that federal intervention in such schemes would lead to conflicts in the federal-state relationship. *Buford* v. *Sun Oil*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943). Second, abstention is appropriate to avoid a federal court making tentative or premature decisions on issues of state law when a state court decision may substantially eliminate or minimize the federal constitutional issue. *Railroad Comm'n*

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infringement or racial discrimination, automatically to include any action brought under § 1983 is an extension this Court is not persuaded to make. Prior to *Lynch* the Supreme Court revealed that it was not always hesitant to recommend abstention in civil rights actions. See *Reetz* v. *Bozanich*, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970); *Askew* v. *Hargrave*, 401 U.S. 476, 91 S.Ct. 856, 28 L.Ed.2d 196 (1971). And subsequent to *Lynch*, lower courts have continued, under the traditional *Pullman* analysis, to find abstention warranted in appropriate cases, even though they were brought under § 1983. E. g., *South Cutler Bay, Inc.* v. *Metropolitan Dade County*, 349 F.Supp., 1205, 1208 (S.D.Fla.1972); *Hill* v. *Brinegar*, 371 F.Supp. 1166 (D.Del.1974). In short, there is no per se exception to the abstention doctrine for civil rights cases. See also Field, *Abstention in Constitutional Cases:* The Scope of the Pullman Abstention Doctrine, 122 U.Pa.L.Rev. 1071, 1131-34 (1974).

v. *Pullman*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941).[6] Both of these considerations are present in the case before us.

In *Burford, supra,* a federal court was called upon to consider a Texas administrative decision made pursuant to a complex state scheme for conserving its oil deposit resources. The protective scheme in *Burford* was no doubt more complex than the California coastal protection plan. Nevertheless, the questions of California coastal protection present local matters of vital state concern, just as preservation of oil resources presented local matters of vital state concern to the state of Texas in *Burford.* For this Court to presume an essential role in this state scheme of resource preservation would be an audacious and presumptuous violation of *Burford* principles.

[7] The Supreme Court's most recent comprehensive statement on the abstention doctrine *Lake Carriers', supra,* applies it to a constitutional challenge of state laws that had not been definitively construed by state courts. Indeed, that case bears a striking resemblance to the controversy here. The *Lake Carriers'* plaintiffs challenged the Michigan Watercraft Pollution Act on a variety of constitutional grounds. The Michigan law restricted the discharge of sewage into state waters and required toilets on small boats to be equipped with certain pollution control devices. Individual boat owners and an association of lake carriers mounted a Federal challenge to the statute, as interpreted

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6. "In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. . . . The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court. The resoures of equity are equal to an adjustment that will avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication." 312 U.S. at 500, 61 S.Ct. at 645.

by state authorities, on preemption, commerce clause, equal protection, due process, and vagueness theories.

The Supreme Court found the case a proper one for federal abstention, explaining:

> The paradigm case for abstention arises when the challenged state statute is susceptible of "a construction by the state courts that would avoid or modify the (federal) constitutional question. *Harrison* v. *NAACP*, 360 U.S. 167 [79 S.Ct. 1025, 3 L.Ed.2d 1152]. . . . More fully, we have explained:
>
> > "Where resolution of the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law, abstention may be proper in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions of state law, and premature constitutional adjudication . . . *Harman* v. *Forssenius*, 380 U.S. 528, 534 [85 S.Ct. 1177, 1182, 14 L.Ed.2d 50] (1965).
>
> 406 U.S. 510-11, 92 S.Ct.

The Court then identified two ambiguities in the state statute and concluded:

> "We do not know, of course, how far Michigan courts will go in interpreting the requirements of the state Watercraft Pollution Control Act in light of . . . (a federal water control act) and the constraints of the United States Constitution. But we are satisfied that authoritative resolution of the ambiguities in the Michigan law is sufficiently likely to avoid or significantly modify the federal questions appellants raise to warrant abstention, . . ."
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> 406 U.S. at 512, 92 S.Ct. at 1758.

What was said of the Michigan Watercraft Pollution Act in *Lake Carriers'* can also be said as to the whole Coastal

Zone Act and specifically the Vested Rights provision: neither have been the subject of definitive interpretation by the state courts. This is not to say that the California courts have not had the opportunity to review various problems arising under these statutes. They have, but they have not had the opportunity to deal with the specific issues raised in this litigation. What little interpretation has occurred leads this Court to believe that these statutory provisions are indeed subject to a variety of interpretations which may well avoid the federal questions raised here. In particular it is not clear whether the Vested Rights Section, 27404, is the exclusive definition of vested rights or even the exclusive device for establishing eligibility for an exemption from the permit requirements of § 27400.[7] Conceivably this statute is subject to at least two interpretations: one that the section is the exclusive definition of vested rights for the Act and thus requires a building permit and substantial construction by a certain date, or two, that it is non-exclusive and may thus be judicially extended to include projects where there has been extensive planning and substantial investment of money in reliance on pre-Coastal Zone Act governmental assurances, even though building permits were not obtained and substantial construction not begun.

The few California cases involving the Coastal Zone Act, indicate that there is some confusion about who is exempt and who must obtain permits and the California courts have

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7. "§ 27400. *Necessity of permit*

On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency.

Except as provided in Sections 27401 and 27422, no permit shall be issued without the affirmative vote of a majority of the total authorized membership of the regional commission, or of the commission on appeal."

already chartered a course of judicial interpretation which indicates that an unyielding interpretation of the language of these statutes is not appropriate.

In *San Diego Coast Regional Comm'n* v. *See the Sea, Ltd.*, 9 Cal.3d 888, 109 Cal.Rptr. 377, 513 P.2d 129 (1973), Justice Clark found that a developer who did not obtain a building permit until after November 8, 1972, the effective date of the Act but before February 1, 1973 its operative date, and who had prior to the operative date demolished a building and spent $79,000.00 on construction *was not required to get a permit* in accordance with § 27400 in order to continue construction. Although Justice Clark does not directly deal with the issue of vested rights in § 27404 he does state that "[w]hile providing for exemption, the section [27404] does not expressly impose a permit requirement on anyone." 109 Cal.Rptr. at 379, 513 P.2d at 131. This would seem to imply that compliance with § 27404 provides one way to avoid the necessity of a § 27400 permit under the Act, but since it does not require all others to get a permit there may be additional ways to avoid the § 27400 permit. In fact, Justice Clark found that a building permit issued before February 1, 1973 and substantial construction before that date negated the necessity of a § 27400 permit. How far this can or will be taken is still unclear.

In *Central Coast Regional Comm'n.* v. *McKeon Constr. Co.*, 38 Cal.App.3d 154, 112 Cal.Rptr. 903 (1974), the court adopted the *See the Sea* expanded date theory and issued an injunction preventing construction without a commission § 27400 permit, since defendants were neither exempt under the *See the Sea* test nor § 27404. It should be noted here however, that defendant McKeon did not purport to have a vested right other than those delineated in the statute, but

rather tried to argue "equitable" compliance with the exemption provision. The court was evidently unconvinced.

Further in *Environmental Coal. of Orange Cty., Inc.*, v. *Avco C. D. Inc.*, 40 Cal.App.3d 513, 115 Cal.Rptr. 59 (1974), (a case involving a planned-unit development), the Fourth District found that substantial grading pursuant to a grading permit prior to February 1, 1973 entitled defendants to complete that phase without a § 27400 permit even though *See the Sea* and § 27404 spoke only of building permits and substantial construction.[8] The court went on however, to approve a preliminary injunction against development beyond the grading stage on the theory that any determination of whether the project *in toto* was exempt from the permit requirement should be determined at trial on the merits. *Id.* at 65. This left open the question of whether other substantial commitments made under governmental authorization may be recognized as exemptions under the Act.

Thus in these three cases, the November 8, 1972 date in § 27404 was judicially changed to February 1, 1973, the building permit requirement was judicially expanded to include a grading permit and the question left open as to whether non-construction (e. g., grading) work might exempt a developer from strict compliance with the permit requirement. It has also been represented to the Court that the State of California takes the position that the "building permit" requirement of § 27404 would be fulfilled where there has been "final discretionary governmental approval" but no permit. Although that position has evidently not as

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8. Specifically, the court said "Although the defendant in *See the Sea* did its work under a building permit the majority decision is not necessarily predicated upon the existence of a 'building permit' as distinguished from a 'grading permit', *or some other governmental authorization,*" (emphasis added) *Environmental Coal. of Orange Cty., Inc., supra* at 64.

of yet been applied by the courts, it is but yet another indicator that § 27404 is not necessarily limited to its literal terms.

Under these circumstances it is impossible for this Court to accept the premise that this statute is void on its face. Its literal terms have already been construed so as to broaden its application. Its meaning in conjunction with § 27400 and the analysis in *See the Sea, supra,* is less than crystal clear. This is exactly the type of case referred to in *Lake Carriers' Ass'n* v. *MacMullan, supra,* 406 U.S., at 510-511, 92 S.Ct. at 1757, where the challenged state statute is susceptible of "'construction by the state courts that would avoid or modify the (federal) constitutional question.'"

The only troublesome aspect of abstaining is the possibility that plaintiffs may face unreasonable delay in receiving a state interpretation of the vested rights statute. Time is important in this case because the whole interim permit scheme under this Act will expire in 1976. Any determination of rights to develop the coastal areas subject to the Act prior to the adoption of the final land use plan must necessarily be made prior to 1976. Thus it is of some concern that abstaining and sending plaintiffs back to state court will compromise their constitutional questions. This concern is mitigated however by the fact that there is current litigation in the state court in which plaintiffs are parties and other litigation in which they are not parties where the vested rights statute can be interpreted.

As noted before the environmental group defendants herein have requested a writ of mandate in the Superior Court seeking review of the permits granted these plaintiffs. While these defendants are seeking a determination that the permits should not have been granted, the plaintiffs are evidently countering that not only were the permits prop-

erly granted, but that they should have been granted without conditions or plaintiffs should even be exempt from the permit requirement under the vested rights concept.[9]

It has also come to the Court's attention, that the developer of Sea Ranch, Oceanic California, Inc., who previously requested and was denied an exemption under § 27404 has filed its own writ of mandate action on that denial. Although plaintiffs herein are not parties in that action, an interpretation of the vested rights statute favoring Oceanic may moot plaintiffs' complaint.

Finally, an independent mandate procedure in state court is available to plaintiffs. It has been represented that even an expedited procedure is possible. Plaintiffs argue, however, that since they concluded that they were automatically precluded by the terms of § 27404 they never specifically sought an exemption before the commissions, and fear that no state court will hear their writ without sending them back to the commission. This fear may be justified since such appears to be one of the holdings of *State* v. *Superior Court of Orange Cty. (Veta Co.),* 12 Cal.3d 237, 115 Cal. Rptr. 497, 524 P.2d 1281 (1974). There is no reason, however, to believe that the proceedings before the commission would be unduly protracted. If the commission insists on interpreting § 27404 strictly, there would be little need of a factual finding since these plaintiffs had neither obtained a building permit by November 8, 1972 or February 1, 1973, nor had they "diligently commenced construction . . . ." And if the commission agrees that § 27404 allows a flexible vested rights determination, the fact-finding process should

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9. Plaintiffs have filed a reservation of rights in this California action reserving all the constitutional questions for a determination by the federal court. This procedure was suggested in *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411, 421, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964).

still be brief presumably limited to the degree of Sea Ranch's investment and the nature of any prior governmental approval. Finally if the commissions' determinations favor exemption based upon a vesting of plaintiffs' rights, further litigation in this Court may become unnecessary. Thus, even though the possibility of delay is an important factor in this decision, the Court is of the opinion that it is outweighed by the inappropriateness of interjecting itself into the evolution of this complicated and important state statutory scheme, especially since there is every reason to believe these statutes can be interpreted so as to modify or avoid the constitutional questions.

It is hereby ordered that:

1. Defendants' motions to abstain are granted,
2. Defendants' California Coastal Commission and Natural Resources Defense Council motions to dismiss the claim to restrain enforcement of § 27404 is granted,
3. All parties pursue with reasonable diligence in state court a determination of the state issues,
4. Jurisdiction over the remainder of this case is retained, pending state court resolution of state issues, so that the parties may apply to this Court for such relief as may be required during the pendency of the state actions.

Appendix C

The SEA RANCH ASSOCIATION, et al.,
Plaintiffs-Appellants,

v.

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSIONS et al.,
Defendants-Appellees.

No. 75-2281.

United States Court of Appeals,
Ninth Circuit.

June 10, 1976.

OPINION

Before BARNES, BROWNING and WRIGHT, Circuit Judges.

EUGENE A. WRIGHT, Circuit Judge:

In this Section 1983 action [42 U.S.C. § 1983], appellants challenge the constitutionality of portions of the California Coastal Zone Conservation Act (the Act) [Calif. Pub. Resources Code §§ 27401 *et seq.* (West. Supp.1976)]. A three-judge court "abstained" in favor of "state court . . . determination of the state issues." *Sea Ranch Ass'n v. California Coastal Zone Conservation Comm'n,* 396 F.Supp. 533, 541 (N.D.Cal.1975).

We hold that the three-judge court was properly convened and that its order of abstention is appealable to this court. With respect to the vested rights issue presented to this court, we hold that if the claim is for exemption of the entire Sea Ranch project, the court below properly abstained. Alternatively, if the claim is for exemption of in-

dividual parcels, there was no "case or controversy" and therefore no jurisdiction under either Article III of the United States Constitution or the Declaratory Judgment Act [28 U.S.C. § 2201].

I.

THE APPEAL HAS BEEN PERFECTED

[1] Three days after filing of the district court order, plaintiffs moved for "reconsideration" and "clarification," under Fed.R.Civ.P. 60(b). After denial of that motion, plaintiffs filed a notice of appeal, nearly four months after the date of the original order.

A Rule 60(b) motion does not affect the finality of judgment, nor does it affect the 30-day period [Fed.R.App.P. 4(a)] within which an appeal to this court must be perfected. 7 J. Moore, Federal Practice ¶ 60.30[2] at 417-18 (2nd ed. 1975).

But nomenclature is not controlling. *Id.* ¶ 60.29 at 414 n. 4. By motion appellants requested relief which might have been granted under Fed.R.Civ.P. 59(e). Since it was filed within the 10-day period set by the rule, it should be treated as a Rule 59 motion. Moore, *supra,* ¶ 60.29 at 414 n. 4. As such, its pendency suspends the time for appeal. 6A J. Moore, Federal Practice ¶ 59.12[3] at 59-253 (2nd ed. 1975).

Since the notice of appeal, filed May 9, was clearly within 30 days of the April 11 order denying reconsideration and clarification, the appeal has been perfected.

II.

THE ORDER OF THE DISTRICT COURT IS APPEALABLE

[2] The order of the district court is found at 396 F. Supp. 541. After publication the court modified its order by

deleting its paragraph 2 and substituting: "Plaintiff's motion for preliminary injunction is denied."

Appellants properly appealed the order, as modified, under Title 28 U.S.C. § 1292(a). *Cf. M.T.M., Inc. v. Baxley,* 420 U.S. 799, 804, 95 S.Ct. 1278, 43 L.Ed.2d 636 (1975), *opinion on remand,* 523 F.2d 1255 (5th Cir. 1975).

[3] In the alternative, this court has jurisdiction under the All Writs Act [28 U.S.C. § 1651]. *Cf. Dellinger v. Mitchell,* 143 U.S. App.D.C. 60, 442 F.2d 782, 788-90 (1971); *Cord v. Smith,* 338 F.2d 516, 521-22 (9th Cir. 1964), *mandate clarified,* 370 F.2d 418 (9th Cir. 1966).

III.
APPELLATE JURISDICTION LIES IN THIS COURT

[4] The three-judge court was properly convened pursuant to Title 28 U.S.C. § 2281. The challenged statute is designed to effect statewide policy, and has far more than merely local impact. *See* Section 27001 of the Act; *Board of Regents v. New Left Education Project,* 404 U.S. 541, 542, 92 S.Ct. 652, 30 L.Ed.2d 697 (1972). *Compare Hjelle v. Brooks,* 377 F.Supp. 430, 435 (D. Alaska 1974).

[5] Since the federal pleadings suggested no clear disposition, some exercise of discretion by a three-judge court was necessary to dispose of the claims presented. *See New York State Waterways Ass'n v. Diamond,* 469 F.2d 419, 423 (2nd Cir. 1972).

[6] These considerations suggest that only the Supreme Court has jurisdiction to hear this appeal [28 U.S.C. § 1253]. But the court below did not base its order of abstention on "resolution of the merits of the constitutional claim presented below." *M.T.M., Inc. v. Baxley,* 420 U.S. 799, 804, 95 S.Ct. 1278, 1281, 43 L.Ed.2d 636 (1975). Therefore, appeal lies to this court, not to the Supreme Court. *Id.*

IV.

THE ABSTENTION ORDER

Appellants argue that the abstention order was improper because: (1) this action under Section 1983 is exempt from the requirement of exhaustion of state administrative remedies; and in any case (2) the state commissions have no power to rule on appellants' "vested rights" claims.

With the appeal in its present posture, we need not address the precise issues raised. A review of the relevant facts, most of which are found in the district court opinion, 396 F.Supp. at 534-36, will explain.

One matter of particular importance was not discussed in detail by the district court. In their complaint appellants challenged both the Act's *permit system,* and the Act's vested rights *exemption system.* The two are distinct, and supported by separate administrative schemes. To administer it, the Act establishes one California Coastal Zone Conservation Commission and six Regional Commissions. Their duties are twofold: (1) to create a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the California Coastal Zone; and during the planning period (2) to administer a permit system for the permit area of the Coastal Zone to insure that any development during the planning period will be consistent with the objectives of the Coastal Act and with the ultimate plan. [§§ 27001; 27300 *et seq.;* 27400 *et seq.*].

A landowner desiring to develop property within the permit area during the interim planning period must either: (1) establish an *exemption* from the permit requirements of the Act by showing that construction of his development was already under way, as of the date of the passage of the Act, to such an extent that the developer had acquired a

vested right or a statutory exemption to complete what he had begun [§ 27404];[1] or (2) apply for an interim development *permit* [§ 27400].

The commissions have established two separate proceedings, one applicable to claims of *exemption*, the other to *permit* applications. Claims of exemption are reviewed by the commissions under Title 14 Calif.Admin.Code §§ 13700-07 (1974), while permit applications are reviewed under Sections 13200-630 of the same Code. Claims of exemption are entitled to "priority of the calendar" as against permit applications. [*id.* § 13703].

The issues in each proceeding are distinct. Under a claim of *exemption*, the inquiry is whether, for the project sought to be exempted, requisite governmental approvals were issued before the effective date of the Act and whether there has been substantial good faith reliance upon them. Under a *permit* application, the inquiry is merely to assure that any development during the interim planning period is consistent with the planning and environmental objectives of the Act, and does not foreclose planning options while the plan is being formulated.

While both schemes were challenged in the federal complaint, the district court perceived

> the crux to the constitutional challenge . . . [to be] whether constitutional concepts of vested rights and due process preclude the application of the California Coastal Zone Act to plaintiffs at all.

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1. An exemption may apparently be established in at least three ways: (1) under the "grandfather clause" principle of Section 27404 of the Act; (2) under the decision of the California Supreme Court in *San Diego Regional Comm'n v. See The Sea, Ltd.*, 9 Cal.3d 888, 109 Cal.Rptr. 377, 513 P.2d 129 (1973); and (3) under the common law doctrine of vested rights.

396 F.Supp. at 536; *and see id.* n. 4. In briefs and oral arguments before this court appellants focused on the vested rights question noted by the district court. We do not understand them to be challenging the constitutionality of the state's permit system.

From the record we cannot ascertain whether the appellants are asserting collectively that the entire Sea Ranch project, consisting of thousands of separately owned parcels, is entitled to a vested rights exemption from the provisions of the Act, or that each parcel is individually exempt. With the action in its present status we have no way of knowing whether a single, project-wide claim for exemption, or multiple, single-parcel claims are more appropriate. However, whatever the answer, appellants cannot prevail.

We are aware that Oceanic California, Inc., the developer of the Sea Ranch project, previously requested from the commissions and was denied a project-wide exemption from the Act. 396 F.Supp. at 540. It then sought a writ of mandate in the California Superior Court, and the action is pending before the California Court of Appeal.

Counsel for Sea Ranch has sought to divorce this action from that of Oceanic. However, we must agree with the court below that insofar as the federal claim is for project-wide exemption, a state court "interpretation of the vested rights statute favoring Oceanic may moot [federal] plaintiffs' complaint." 396 F.Supp. at 540.

[7, 8] As the court below explained, 396 F.Supp. at 538-40, Section 27404 of the Act is of uncertain application. The California Court of Appeal in the *Oceanic* case may interpret the statute in such a way that no federal constitutional questions will remain for federal court disposition. Therefore, if appellants assert project-wide exemption, the

order of abstention of the three-judge court was not an abuse of discretion and indeed was clearly proper.[2]

If, on the other hand, appellants are asserting individual vested rights exemptions, their claims should not have been entertained because of their failure to describe a "case or controversy" within the meaning of Article III of the United States Constitution, or the Declaratory Judgment Act [28 U.S.C. § 2201].

Appellants have never applied to the state commissions for vested rights exemptions. Instead, they asked for permits. It is impossible to ascertain from the record before us whether any parcels of individual appellants would or would not be exempt under Section 27404 of the Act. Counsel for Sea Ranch represented to the district court that individual lots at the Sea Ranch were in all stages of development. There is no indication as to which lots are in what stages. The complaint tells us only that the individual appellants are "individual owners of lots at the Sea Ranch."

[9] A case or controversy is not presented simply because a party is subject to a general regulatory process which, when applied to the specific facts developed in some future administrative proceeding, *might* cause a state agency to take a particular action which some court *might* thereafter determine to be unconstitutional. *Cf. Golden v. Zwickler*, 394 U.S. 103, 110, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969).

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2. Since disposition by the *state court* of the claim of project-wide exemption may moot this controversy to the benefit of appellants, we need not consider (and the district court should not have considered) whether appellants, by stating a claim for relief under Section 1983, are exempted from the requirement of exhaustion of *administrative* remedies.

Further, it appears that the California Court of Appeal can rule on the issues before it without the need of additional discovery. Thus the district court's decision to deny appellants' motion to compel federal discovery cannot at this juncture be considered erroneous.

We emphasize that appellants challenge Section 27404 not on its face, but in its application. *See* 396 F.Supp. at 538-40. While the distinction between facial and as-applied challenges is not determinative, it is of some significance.

[10] An allegedly unconstitutional land use restriction clear on its face may be challenged without awaiting its application or threat of application, since the very existence of the restriction creates the necessary case or controversy as to any party having standing to challenge it. *See, e. g., Park View Heights Corp. v. City of Black Jack,* 467 F.2d 1208, 1216 (8th Cir. 1972). *Cf. Regional Rail Reorganization Act Cases,* 419 U.S. 102, 143, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974).

[11] But where, as here, the constitutional question presented to a federal court turns on the application of a land use restriction to specific parcels of property, no case or controversy is presented absent some indication that the plaintiffs' rights have been subjected to a real and immediate threat. *See, e. g., McCahill v. Borough of Fox Chapel,* 438 F.2d 213 (3d Cir. 1971).

[12] Since appellants have never individually applied to the state commissions for exemption, it can scarcely be said that the state, through its commissions, has deprived appellants of vested rights. It has not even threatened to. The concern of the individual appellants for deprivation of property rights is thus far entirely self-imposed and wholly speculative.[3]

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3. The fact that Oceanic failed to obtain from the state commissions a *project-wide* exemption suggests that the asserted property rights of *individual* owners at the Sea Ranch are in some measure threatened even though they have never applied for individual exemption. *Cf. Steffel v. Thompson,* 415 U.S. 452, 459, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974). However, in this case appellants have made no showing that they as individuals are in a situation

If by his pleadings an individual appellant has stated a case or controversy with respect to individual "vested rights," we would have to say that any landowner within the statutorily-defined "permit area" [§ 27104] could challenge the constitutionality of Section 27404 simply by asserting a belief of non-exemption under the statute. We cannot entertain such abstract claims.

V.

CONCLUSION

To the extent that the federal complaint alleged a vested rights exemption for the entire Sea Ranch project, the court below did not abuse its discretion by abstaining. In that respect its order is affirmed. To the extent that the federal complaint alleged vested rights exemptions for individual property owners at the Sea Ranch, the complaint should have been dismissed for lack of case or controversy.

As no other aspects of the district court order have been brought to the attention of this court, we leave it otherwise undisturbed.

Costs are awarded to appellees.

REMANDED

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identical to, or even similar to, that of Oceanic. Without such a showing, any threat to the individual appellants herein can scarcely be considered "real and immediate," the requisite standard for establishment of a case or controversy. *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974), *quoting Golden, supra*, 394 U.S. at 109, 89 S.Ct. 956.

Appendix D

In the United States District Court
For the Northern District of California

ORDER AND JUDGMENT

NO. C74-1320

Three Judge Court

THE SEA RANCH ASSOCIATION,
a California nonprofit corporation, et al.,
Plaintiffs,

v.

THE CALIFORNIA COASTAL COMMISSION, et al.,
Defendants.

Entered in Civil Docket 21 May 1981

The motions by plaintiffs for partial summary judgment and by defendants for dismissal having come on for hearing, the issues having been argued by counsel and submitted, the court having considered the motion for dismissal as a motion for summary judgment, and an opinion having been filed by the court herein on April 7, 1981, denying plaintiffs' motion for partial summary judgment and granting defendants' motion for summary judgment,

It is HEREBY ORDERED, ADJUDGED and DECREED, in accordance with the opinion filed herein, that summary judgment is entered in favor of defendants, that the case is dismissed with prejudice and that each party shall bear its own costs.

DATED: 4 May, 1981.

IT IS SO ORDERED, ADJUDGED AND DECREED.

/s/ Spencer Williams

Appendix E

In the United States District Court for the
Northern District of California

No. C-74-1320 SW

Three Judge Court

THE SEA RANCH ASSOCIATION, a California nonprofit corporation, for itself and its members, LAWRENCE CORINA, ADAM KOTOWSKI, ROY E. BERGER, CHANNING JONES, JR., HAROLD HEINRICHS, JOHN PALOMINO, JOSEPH PICCHI, ROBERT TREFRY, and CHARLES HOGE,

Plaintiffs,

vs.

THE CALIFORNIA COASTAL COMMISSION, et al.,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that plaintiffs above named hereby appeal to the Supreme Court of the United States from the order and judgment in this action dated May 4, 1981 and entered on May 21, 1981.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: June 5, 1981.

PILLSBURY, MADISON & SUTRO
NOBLE K. GREGORY
ROBERT M. WESTBERG
REGINALD D. STEER
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Appendix F

California Coastal Act of 1976, California Public Resources Code § 30000, et seq.:

§ 30001. Value of coastal zone

The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

§ 30001.5. Basic goals

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

§ 30010. Compensation for taking of or damage to private property

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the regional commission, the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

§ 30103. "Coastal zone"

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In

significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of such map with the country clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary, but in no event more than 100 yards, or the minimum distance seaward necessary, but in no event more than 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features.

§ 30106. "Development"

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act

(commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

§ 30210. Maximum access and recreational opportunities

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

§ 30211. Interference by development

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

§ 30212. Access from public roadway

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the regional commission or the commission determines that such activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision, "bulk" means total interior

cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

§ 30251. Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

§ 30252. Maintenance and enhancement of public access

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the

recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

§ 30254. Public works facilities

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

§ 30300. Existence of commissions

There is in the Resources Agency the California Coastal Commission and, until not later than June 30, 1981, six regional coastal commissions.

§ 30600. Coastal development permits: Local government

(a) In addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, on or after January 1, 1977, any person wishing to perform or undertake any development in the coastal zone, other than a facility subject to the pro-

visions of Section 25500, shall obtain a coastal development permit.

(b) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Such procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government. A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from a regional commission, the commission on appeal, or the commission where there is no regional commission.

(d) After certification of its local coastal program, a coastal development permit shall be obtained from the local government as provided for in Section 30519.

§ 30601. Coastal development permits: Commission or regional commission

Prior to certification of the local coastal program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) of Section 30600, a coastal development permit shall be obtained from the

regional commission, or the commission on appeal, or the commission where there is no regional commission, for any of the following:

(1) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Any development which constitutes a major public works project or a major energy facility.

§ 30607. Terms and conditions of permit

Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.

Appendix G

SEA RANCH OVERALL CONDITIONS AND FINDINGS

(Adopted by The California Coastal Commission, March, 1979)

I. *Overall Conditions*

All development at the Sea Ranch shall be subject to the overall conditions set forth below. Development shall proceed only upon the satisfaction of all of the conditions contained herein. A number of the conditions that are within the power of Oceanic Properties, Inc. to satisfy will be implemented through a settlement of litigation while other provisions affecting Oceanic will be implemented through appropriate permit applications.

1. *Water Supply.* An adequate water supply for all stages of development must be provided in a manner that will not cause significant adverse impacts on coastal resources as set forth in Chapter 3 of the California Coastal Act of 1976.

The Commission will, as required by Section 30412 of the Coastal Act, abide by the State Water Resources Control Board (SWRCB) of the decision as to how much water the Sea Ranch Water Company may withdraw from wells and local waterways and in which manner it may be withdrawn. The Commission will request an estimate by the Department of Water Resources (DWR) of the water needs of the Sea Ranch for each stage of the development covered by these overall conditions.

If at any stage of development the water use of such additional development would raise the total DWR estimated water requirements of the Sea Ranch above the amount the SWRCB has determined can be supplied con-

sistent with the terms and conditions of Sea Ranch Water Company's diversion permit, Condition 1 of this permit will be deemed not met. In that event, additional proposed development may not proceed until the estimated water needs can be met consistent with the terms and conditions of the diversion permit as determined by the SWRCB.

2. *Septic System Monitoring and Corrective Measures.* Adequate provision must be made for the provision of septic tank systems at all stages of development in a manner that will not cause significant adverse impacts on coastal resources as set forth in Chapter 3 of the California Coastal Act of 1976. The Sea Ranch Association shall fully comply with all requirements of the Regional Water Quality Control Board with regard to monitoring of septic tanks and any corrective measures if needed. The monitoring system and legal provisions for the enforcement of corrective measures shall either conform with or be the equivalent of the provisions set forth in S.B. 430 (commencing with Health and Safety Code Section 6950). Dual leachfields shall be installed wherever recommended by the Regional Water Quality Control Board or Sonoma County but shall not otherwise be required.

3. *Public Access.*

a. *Beach Lateral Access Easements.* The Sea Ranch Association shall grant to a public agency, state or county, a non-exclusive easement for public use of the area between the line of mean high tide and either the toe of the bluff or the first line of vegetation, whichever is nearest the water, all as shown on a map to be prepared and jointly agreed upon by the Commission and the Sea Ranch Association. The easement shall be limited to Walk-on Beach and the adjacent beach to the north, in Unit 28; Shell Beach in Unit 24; the beach at the boundary of Units 21 and 26; Pebble Beach in Unit 17, and; Black Point Beach in Units 3, 1, and 8.

The easement shall run with the land and shall be prior to all encumbrances except tax liens, and the grant of easement shall be in a form which shall bind the Association and any successors in interest to allow the public to walk, sit, swim, fish and otherwise use the area between the mean high tide line and the toe of the bluff or first line of terrestrial vegetation. The mean high tide line is understood by all parties to be ambulatory, and the easement shall extend at all times from the toe of the bluff or first line of terrestrial vegetation seaward to the public tidelands.

b. *Access from Highway 1 Across Oceanic Lands to Beaches.* Oceanic shall record an instrument as a covenant running with the land which shall be prior to all encumbrances except tax liens irrevocably offering to dedicate to any public agency, state or county, all of the following easements all as shown on a map to be prepared and jointly agreed upon by the Commission and Oceanic:

(1) In Unit 34-A, any of its lands necessary to complete the accessways and parking specified in Condition 3c(2) below. Oceanic shall assure that the construction of Leeward Road shall be completed through Unit 34-A and shall assure that the public agency which accepts the access dedications in Unit 34-A shall retain the right to hook-up to sewer and water service lines. Except as provided in Condition 5 below, Oceanic shall dedicate all its lands southerly of the lots on Sea Drift in Unit 34-A to the Association as commons area for the purposes of open space.

(2) In Unit 36, a 30 ft.-wide easement for the purposes of vehicle pedestrian access from Highway 1, and land for an intersection of the vehicle accessway with the highway and such grading easements as are required by the agency or association accepting the accessway to comply with applicable roadway standards, a parking area for 10 cars, and a 15 ft.-wide

pedestrian easement from the parking area to the Association blufftop commons area in Unit 36.

(3) In Unit 8, a 30 ft.-wide non-exclusive easement for the purposes of public vehicle and pedestrian access from Highway 1, and land for an intersection of the vehicle accessway with the highway and such grading easements as are required by the agency accepting the access easement to comply with applicable roadway standards, a parking area sufficient for 10 cars, and a 15 ft.-wide pedestrian easement from the parking area to the bluff edge at Black Point Beach.

The easement shall be relocatable within Unit 8 in the future as part of a project either permitted by the Coastal Commission or consistent with a certified Local Coastal Program for the area. All costs of any such relocation, including replacement of any improvements made by the accepting agency, shall be borne by Oceanic California, Inc.

(4) *Possible Improvements in Accessways.* The design but not the need for any improvements, such as restrooms or trash collection facilities, made in the accessways by the agency or association accepting them shall be subject to the approval of the Association's design review committee.

c. *Access Across Association Commons to Beaches.* The Association shall record an instrument as a covenant running with the land, which shall be prior to all encumbrances except tax liens and shall bind the Association and any successors in interest, irrevocably offering to dedicate to any public agency, state or county, the following non-exclusive easements for the purpose of public parking and public transit to and from the beaches, all as shown on a map to be prepared and agreed upon by the Commission and the Association:

(1) A pedestrian easement on a blufftop trail extending from the boundary of Gualala Point Regional Park through Units 35B, 35A, 35C, and 34A, to the northern boundary of Unit 28. The blufftop trail shall intersect Sonoma County's Salal Trail and the Fish and Game Commission's accessway to Del Mar Preserve.

(2) In Unit 34-A, a 30 ft.-wide vehicle and pedestrian accessway from Highway 1, and land for an intersection of the vehicle accessway with the highway and such grading easements as are required by the agency or association accepting the access easement to comply with applicable roadway standards, a parking area for 10 cars, and a 15 ft.-wide pedestrian accessway from the parking area to the blufftop trail easement in Unit 34-A. The parking area shall be placed on the upper terrace near the highway, taking into account the ability of the knoll and trees to screen the parking area from the highway and other areas.

(3) In Unit 28, a 15 ft.-wide pedestrian easement from the blufftop easement in Unit 34-A to the beach adjacent to and north of Walk-on Beach and a 15 ft.-wide pedestrian easement from that beach across the intervening headland to Walk-on Beach.

(4) In Unit 24: enough land adjacent to the intersection of Whalebone Reach and Highway 1 to park 6 vehicles and to provide vehicle entrance from and exit to Highway 1 and necessary grading easements, all as required by the agency accepting the grants in order to comply with applicable roadway standards, and; a pedestrian easement across commons from the parking area to Shell Beach, including a 15 ft.-wide path from the parking area to the existing Association path northwest of Wild Moor Reach, the Association path itself from that point to the Association blufftop path, the blufftop path to the Association path to the beach, and the Association path and stairs to the beach.

(5) In Unit 36, a 15 ft.-wide pedestrian easement across the blufftop commons connecting the pedestrian accessway offered by Oceanic to the beach at the boundary of Units 21 and 36.

(6) In Unit 17: enough land adjacent to the intersection of Navigator's Reach and Highway 1 to park 4 vehicles and to provide vehicle entrance from and exit to Highway 1 and necessary grading easements, all as required by the accepting agency to comply with applicable roadway standards, and; a pedestrian easement from the parking area along Navigator's Reach to the Association pathway to Pebble Beach, to the Association pathway thence and to the Association path and stairway to the beach.

d. *Limitation on Access to Shell Beach.* Public access to Shell Beach shall be available only when, by Association decision, access is available to members of the Association.

e. *Offer of Dedication for Bicycle Trail.* Oceanic and the Association shall offer to dedicate to any public agency for a public bicycle trail the fire trail along Highway 1 throughout the Sea Ranch as shown on a map to be prepared by the Commission, Oceanic and the Association. Oceanic shall have the right to cross the fire trail to provide access to its lands to the east. The design, surfacing, and other aspects of construction of the bicycle trail shall fully take into account the present use of the area as a firebreak, and use of the area for a bicycle trail shall not preclude the ability of the Association to have adequate firebreaks in the area.

4. *Tree Thinning and Removal to Restore Coastal Views.* The Sea Ranch Association shall restore public coastal views as set forth below. All geographic areas are as set forth below and depicted on a map on file in the Commission office as part of this agreement. Tree thinning and removal shall be accomplished in three phases to be completed

by the dates specified below except that for that respective calendar year during which the State Department of Forestry prohibits such work due to fire hazard, the compliance date shall be extended by the number of days of the prohibition. Oceanic shall cooperate fully in this program. The tree thinning and removal shall not affect any hedgerow existing on December 31, 1964, nor shall this agreement prevent natural regeneration of trees that were standing on or before December 31, 1964.

a. The following shall be completed within 12 months of the completion of this agreement:

(1) *Unit 15.* Removal of the Monterey pines from along the highway, clumping of trees to create 50 ft.-wide open areas to provide seaward view. Removal of all trees between Yardarm Drive and Highway 1 near the Yardarm Drive entrance to open up a 200 ft.-wide area. Removal of all trees from between Yardarm Drive and the highway along the southernmost 200 ft. of Yardarm Drive.

(2) *Unit 1.* Open 100 ft.-wide clearing at end of Captain's Close. Trees on commons north of Moonraker Road shall be topped to be below the line of sight from the highway to the next northerly hedgerow. Top and thin trees to open a downcoast view over Moonraker Recreation Center to Black Point. From Unit 1 north to Unit 7 clump trees with 50 ft.- and 200 ft.-wide clearings.

(3) *Unit 3.* Top and remove trees opposite Highway 1, cut to restore upcoast view to Del Mar Point.

(4) *Unit 17.* Remove the trees along the fence at north hedgerow to open lateral seaward views and, as possible, the downcoast view.

(5) *Unit 18.* Remove all the trees growing along the fence. Leave clumps only where trees are more than 10 ft. from the fence. Thin trees on commons area just north of bicycle trail.

(6) *Unit 21.* At the north hedgerow remove the existing row of trees along the fence to open the downcoast view and view of the coastal ridgeline. Thin the trees behind Lot 33 to maintain this view. Clump trees along the highway between Vantage Road and Breaker Reach to leave 50 ft.-wide openings for ocean views.

b. The following shall be completed within 24 months of the completion of this agreement:

(1) *Unit 11.* Thin trees and create openings northward from the Halprin Gate to the Sea Ranch Lodge entrance.

(2) *Sea Ranch Lodge.* Trim cypresses around the north parking area to below the line of sight from the highway to the next northerly hedgerow to restore upcoast view.

(3) *Unit 7.* Thin and clump trees lining the highway to restore lateral ocean views. Remove all trees at the north end of the unit. No trees shall be removed for 200 ft. in either direction from the Annapolis Road intersection. Remove all trees that are within 50 ft. of the road in the area just north of those to be left at the intersection and clump those trees seaward of that area to leave 50 ft. openings for seaward views.

(4) *Condo Hill.* Remove the trees on the north slope of the hill at the northerly highway turnout to restore ocean views.

(5) *Unit 24.* Remove the trees along the road from the Unit 21 hedgerow north to the common rear corner of Lots 148 and 149, to open the seaward view across the meadows. Widen the opening at Whalebone Reach by removing trees behind Lot 159.

c. The following shall be completed within 36 months of the completion of this agreement:

(1) *Unit 6.* Clear near fence to remove wall effect from along highway between hills south of the Halprin Gate.

(2) *Unit 28.* No trees shall be removed at Bosun's Reach. Elsewhere remove all trees along the highway and those on other commons area to below the line of sight from the highway to the shoreline.

d. *View Maintenance.* The Sea Ranch Association shall maintain all landscaping on commons areas so as to maintain present open views of the shoreline and sea and those restored by the tree removal required in these conditions.

5. *Traffic Circulation Improvements.*

a. *Leeward Road Completion.* Oceanic shall complete the construction of Leeward Road throughout its planned alignment.

b. *Provision for Internal Circulation Revisions.* The Sea Ranch Association shall notifiy the Commission in writing when the number of dwellings at the Sea Ranch reaches 800. At any time subsequent to that level of build-out, the Commission may require a review and appropriate additional study of Sea Ranch traffic. The Sea Ranch Association shall cooperate with the Commission and the State Department of Transportation in studying traffic circulation on Highway 1 adjacent to the Sea Ranch, to determine (a) the contribution to highway traffic attributable to the Sea Ranch; (b) the volume, frequency, and duration of peak recreational traffic on the highway; (c) the amount and pattern of internal versus arrival-or-departure traffic generated by Sea Ranch owners; and (d) the traffic attributable to public use of the public accessways that are part of this agreement. If the studies demonstrate that the level of service on Highway 1 through Sea Ranch during the average recreational peak hour has deteriorated, or threatens imminently to deteriorate, to level of service D, and that revisions of internal Sea Ranch roads and con-

nections to the highway would have significant beneficial effects on traffic flow on the highway, the Sea Ranch Association shall within six months, in cooperation with the other parties, submit to the Commission a plan to adjust internal Sea Ranch roads and close some existing connections to Highway 1 to minimize the impact of Sea Ranch internal trips on traffic flow on the highway. After public hearing, the Commission may approve the plan as submitted or may amend the plan, including amendments as necessary to fulfill recommendations of the Department of Transportation.

To provide for the possibility that internal traffic improvements may be necessary, the Sea Ranch Association shall at this time offer to dedicate commons necessary to put the approved plan into effect. In addition, Lots 50-63 in Unit 34-A shall be reserved under ownership of either Oceanic or the Sea Ranch Association, with appropriate interim open space easements. If determined by the Commission to be necessary, these lots shall be exchanged for lots in other areas which would be required for new roadway alignments as part of the approved plan. The Sea Ranch Association shall bear no costs in connection with the internal traffic improvements including costs of construction or closure of roads or costs of condemnation of any Sea Ranch lots, that may be necessary to carry out the approved plan. No new sections of roadway provided for in the approved plan shall be required to exceed the width of Leeward Road or, in the case of a new roadway section which would link existing cul-de-sacs, the width of the roads which would be connected by the addition.

If, after public hearing on the proposed circulation improvement plan, the Commission and the Association can-

not reach agreement on a mutually-acceptable improvement plan, the matter shall be resolved by arbitration as follows: the Commission shall appoint one person, the Sea Ranch Association shall appoint one person, and the two persons thus appointed shall choose a third. The three persons shall conduct their own investigation of the matter, and their determination shall be binding on the Commission and the Sea Ranch Association. If the plan thus approved requires the use of any commons area for circulation improvements, the Association shall dedicate or provide such commons area as is required.

6. *Consent Calendar Consideration of Individual Homes Meeting Specified Standards.* Permit applications for homes which do not raise issues of conflict with Conditions 1 and 2 as set forth in the Commission's findings below, and which meet the standards below will be placed on the consent calendar for expedited hearing by the North Central Coast Regional Commission. Applications for homes not meeting these standards will be processed in accordance with the permit requirements of the Coastal Act, but the issues before the Commission will be limited to those of the proposed siting, height, and bulk of an individual house, or physical characteristics of a particular lot, and will not include issues affecting Sea Ranch as a whole. The consent calendar processing will apply to homes conforming to the following:

a. *Bulk.*

(1) Homes on all lots east of State Route 1, without regard to square footage, or height, provided they will not be seen from any public highways, beach accessways, or public beaches.

(2) Homes on lots east of State Route 1 that are visible from public highways, beach accessways and public

beaches, if the proposed structures are less than 1,740 sq. ft. in area.

(3) Homes on lots west of State Route 1 where the lots have been designated as "sensitive" by the Commission, if they do not exceed 1,240 sq. ft. in area.

(4) Homes on all other lots west of State Route 1 if they do not exceed 1,740 sq. ft.

b. *Siting and Height.* Homes on specified lots that conform to the siting designations and height limits set forth and defined as follows:

(1) *Definitions.*

(a) *Low Site.* Designates lots on which the home shall be sited on the lowest portion of the lot.

(b) *Frontage Site.* Designates lots on which the home shall be sited on the portion of the lot nearest the frontage road.

(c) *Topo Site.* Designates lots on which the home shall be sited so that shielding of the house from public view by terrain is maximized.

(d) *Tree Site.* Designates lots on which the home shall be sited so that shielding of the home from public view by hedgerows and other trees is maximized.

(e) *Height.* Designates the difference between the elevation of the house ridge top and the average finished grade of the site, or, if built on pole foundation, average existing site grade.

(2) *Specific Designations.* Siting and building height on undeveloped lots west of Highway 1 and on specified lots east of Highway 1 shall conform to the listing in Appendix A.

7. *Waiver of Prior Local Government Approval.* Any owner of a lot governed by these overall conditions may,

upon the satisfaction of the overall conditions by all parties, apply for a coastal development permit without obtaining prior local government approval and without presenting specific development plans, provided that the lot owner(s) states his or her intent to build in accordance with the height, site, and bulk requirements established in these overall conditions.

8. *Five (5) Year Term.* The term for any individual permit granted pursuant to condition 9 or otherwise shall be five (5) years.

9. *Return of Environmental Deposits.* Upon satisfaction of these conditions by all parties, the Commission shall return the $1,500 deposits that have been made for the construction of single-family homes prior to this agreement, both under the Coastal Act of 1976 and the Coastal Zone Conservation Act of 1972 (Proposition 20).

OVERALL CONDITIONS

APPENDIX A

Unit 1	Block 1	Lots 1-4, 7-9	tree site—24′ height
	Block 2	Lots 1 and 4	tree site—24′ height
		Lot 2	frontage site—16′ height
	Block 3	Lots 1 and 5	tree site—16′ height
		Lots 2, 3, and 4	frontage site—16′ height
	Block 4	Lots 1 and 5	tree site—24′ height
		Lots 2-4	frontage site—16′ height
	Block 5	Lots 1-5	— —16′ height
	Block 6	Lots 2-5	frontage site—16′ height
	Block 7	Lots 4, 6, 13, 14	tree site—24′ height
Unit 3	Block 1	Lots 1-8, 10-11, 14-15	tree site—24′ height
	Block 2	Lots 1 and 6	tree site—24′ height
		Lots 3 and 4	frontage site—16′ height
	Block 3	Lots 1, 5, and 6	tree site—24′ height
		Lots 2, 3, and 4	frontage site—16′ height
	Block 4	Lot 1	tree site—24′ height
		Lots 4-7	frontage site—16′ height
	Block 5	Lots 1-2, 4-5	tree site—24′ height
	Block 6	Lot 1	— —24′ height
		Lots 3 and 4	tree site—24′ height
		Lots 6 and 7	frontage site—16′ height
		Lot 8	low site—16′ height
		Lot 9	tree site—16′ height
		Lot 10	frontage site—16′ height
		Lot 13	low site—16′ height
		Lot 16	— —16′ height
Unit 7	Block 1	Lots 1, 3-5	low site—16′ height
	Block 2	Lots 1, 2, 4-9	frontage site—16′ height
	Block 3	Lots 1, 5, 10-14	tree site—24′ height
		Lots 7 and 8	frontage site—16′ height
	Block 4	Lots 1-4, 6-8	frontage site—16′ height
	Block 5	Lots 1, 2, 3, and 4	frontage site—24′ height
		Lots 5, 6, and 7	low site—16′ height
		Lot 12	low site—16′ height
		Lots 13-16	frontage site—24′ height
Unit 15		Lots 3, 4, and 5	low site—16′ height
		Lots 6 and 7	topo site—16′ height
		Lots 9 and 10	low site—16′ height

Unit 17	Lot 1	tree site—24′ height
	Lot 2	tree site—24′ height
	Lots 3, 4, 5, and 6	frontage site—16′ height
	Lots 7, 10, 13-15	frontage site—16′ height
	Lots 17-19	tree site—24′ height
	Lots 20 and 21	low site—24′ height
	Lots 22-23	tree site—16′ height
	Lots 25-26	tree site—16′ height
	Lots 27 and 28	topo site—16′ height
	Lots 29-32	— —24′ height
	Lots 34-37	— —16′ height
	Lots 39, 41, 42	topo site—16′ height
	Lots 43-48	— —16′ height
	Lots 51-55	frontage site—16′ height
	Lots 56 and 57	frontage and top sites 16′ height
	Lots 61, 64, 65, 66, 67, 68, 69, 70, 71	low site—16′ height—if paired—increase in bulk possible
	Lots 72, 73, 75	tree site—16′ height
	Lots 76-78	— —16′ height
Unit 18	Lots 2, 4, and 5	— —16′ height
	Lots 9 and 10	tree site—24′ height
	Lot 11	— —16′ height
	Lots 14, 15	frontage site—24′ height
	Lots 18, 19	frontage site—16′ height
	Lots 20-24	low site—16′ height
	Lots 25-28, 30, 32, 33, 35	frontage site—16′ height
	Lot 36	— —24′ height
	Lots 39-42	frontage site—16′ height
	Lot 43	frontage site—16′ height
	Lots 44 and 45	topo site—16′ height
	Lots 46, 47, and 48	— —16′ height
	Lots 50-54	frontage site—16′ height
	Lots 56-60	frontage site—16′ height
	Lots 61, 63, and 64	low site—16′ height
	Lot 69	— —24′ height
	Lots 70-72, 75, 77-79, 81	— —16′ height
	Lots 82-83, 87	— —16′ height
	Lots 89-92	— —24′ height

(continued)	Lots 93 and 95	low site—16′ height
	Lot 96	tree site—24′ height
	Lots 97-99	frontage and tree sites—24′ height
	Lots 101 and 102	frontage site—16′ height
	Lots 103, 105, and 106	frontage site—16′ height
	Lots 1-3	frontage site—16′ height
Unit 21	Lots 4, 6, and 7	— —16′ height
	Lots 8, 9, and 12	low site—16′ height
	Lots 14 and 15	— —16′ height
	Lots 16, 17, and 19	frontage site—24′ height
	Lots 20-23, 25-27	frontage site—24′ height
	Lots 29-32	— —16′ height
	Lot 34	low site—16′ height
	Lots 36-40	low site—16′ height
	Lot 42	tree site—24′ height
	Lots 43-46	frontage site—16′ height
	Lots 52-58	tree site—24′ height
	Lots 59, 61, and 62	frontage site—24′ height
	Lots 63-65	frontage site—16′ height
	Lot 68	tree site—24′ height
	Lots 70, 72-75, 77-83, 85, 87-89	frontage site—16′ height
	Lots 90-92	— —16′ height
	Lot 94	— —24′ height
	Lots 95-98	frontage site—16′ height
	Lots 1—, 104-107, 109, 111-117, 119, 120, 123-125, 127, 128	frontage site—16′ height
	Lot 130	tree site—24′ height
	Lots 132-141, 143	topo site—24′ height
	Lot 146	frontage site—24′ height
	Lot 147	topo site—16′ height
	Lot 148	low site—16′ height
	Lot 152	low site—16′ height
	Lot 154	low site—16′ height
Unit 24	Lot 1	frontage site—16′ height narrow profile to Route 1

(continued)	Lot 6	— 16′ height
	Lots 8-12, 14-17	frontage site—24′ site
	Lots 18-20	low site—16′ height
	Lots 21-22, 24-26, 30-35	frontage site—24′ height
	Lots 36 and 38-40	— —24′ height
	Lots 41-46	— —24′ height
	Lots 47, 52, 54	frontage site—16′ height
	Lots 55 and 56	low site—16′ height
	Lots 62-67, 71	frontage site—16′ height
	Lots 73 and 74	low site—16′ height
	Lots 75 and 76	low site—16′ height
	Lots 78 and 79	frontage site—24′ height
	Lots 81-83, 84-87, 89, 95-99, 101-103, 105-112, 114-116, 118, 120-121, 124-127, 129-131, 133-135	frontage site—16′ height
	Lots 136-148	frontage site—24′ height
	Lots 149-152	frontage site—24′ height
	Lots 154, 155, and 157	— —24′ height
	Lots 158 and 159	low site—16′ height
Unit 27	Lots 20-22, 24-25	frontage site—16′ height
Unit 28	Lot 2	frontage site—16′ height
	Lots 4, 6-7, 9-11	topo site—16′ height
	Lots 15-17	— —16′ height
	Lot 19	tree site—16′ height
	Lots 21-23, 25-28, 30-31, 33-44, 48-70, 72-78, 81-89, 90-97, 99-114, 117-120	— —16′ height
	Lots 124, 125, 128-130, 132-133, 135-136, 138	tree site—24′ height
	Lot 126	topo site—16′ height
	Lots 139-140	frontage site—16′ height
	Lots 141 and 142 (sensitive)	frontage site—16′ height —pair narrow profile to Route 1

(continued)	Lots 143 and 144 (sensitive)	frontage site—16′ height —narrow profile to Route 1
	Lot 145	frontage site—16′ height —narrow profile to Route 1 to 143/144 pair
	Lots 146 and 147 (sensitive)	frontage site—16′ height —pair narrow profile to Route 1
	Lots 148-150	frontage site—16′ height —narrow profile to Route 1
	Lots 151-153	frontage site—16′ height
	Lots 154, 156-159	topo site—16′ height
	Lots 160 and 161	frontage site—16′ height
Unit 30	Lots 7-9, 11-12	site as platted—24′ height —bulk increase to accommodate stairs
	Lots 14-15	frontage site—16′ height
	Lots 46, 48, 50	low site—16′ height
Unit 35A	Lots 1-16	frontage site—16′ height
	Lots 17-22	frontage site—16′ height
	Lots 23 and 24	frontage site—16′ height
	Lots 25-27	— —16′ height
	Lots 28-30	— —16′ height
	Lots 31-34	— —16′ height
	Lots 35 and 40	tree site—24′ height
	Lots 36-39	frontage site—16′ height
	Lots 41-65	tree site—24′ height
	Lot 66	tree site—24′ height
	Lots 67-69	tree site—24′ height
	Lots 70, 71, 74, and 75	— —24′ height
	Lots 72 and 73	tree site—24′ height
	Lots 76-82	tree site—24′ height
	Lots 83-87	tree site—24′ height
	Lots 88-97, 99	tree site—24′ height
	Lots 101-102	tree site—16′ height
	Lots 103-105	tree site—24′ height
	Lots 106-108	tree site—16′ height
	Lot 109	tree site—16′ height

(continued)	Lots 110-113	tree site—16′ height
	Lots 114-115, 117-120	tree site—16′ height
	Lot 122	tree site—16′ height
	Lot 123	tree site—16′ height
	Lot 124	tree site—16′ height
Unit 35B	Lots 1-25	— —16′ height
	Lots 26-32	— —24′ height
	Lots 33-44	— —16′ height
	Lot 45	frontage site—24′ height
	Lots 46-52	— —16′ height
	Lots 53-55	— —24′ height
	Lots 56-58	— —16′ height
	Lots 59-61	— —24′ height
	Lots 62-88	— —16′ height
	Lot 89	— —24′ height
	Lots 90-95	— —16′ height
Unit 35C*	Lots 1 and 2	tree site—16′ height
	Lots 3-21	frontage site—16′ height
	Lots 22-27	— —16′ height
	Lots 28-31	frontage site—16′ height
	Lots 32 and 34	— —16′ height
	Lots 35-42	tree site—24′ height
	Lots 43-51	frontage site 16′ height
	Lots 52-62	tree site—24′ height
	Lots 63-71	frontage site—16′ height
	Lot 72	— —16′ height
	Lots 73-92	— —24′ height
	Lots 93-96	frontage site—16′ height
	Lots 97-100	— —16′ height
	Lots 101-110	frontage site—16′ height
	Lots 111 and 112	tree site—24′ height
	Lot 113	tree site—24′ height
	Lots 114-122 (sensitive)	frontage site—16′ height
	Lots 123-127	frontage site—16′ height
	Lots 128-138	tree site—16′ height
	Lots 139-146	low site—16′ height
	Lots 147-154	— —24′ height
	Lots 155-164	— —16′ height

Unit 34A*	Lots 1-9	frontage site—16′ height
	Lots 10-14	tree site—24′ height
	Lots 15-26	frontage site—16′ height
	Lots 27-29	tree site—24′ height
	Lots 30-34	frontage site—16′ height
	Lot 35	tree site—24′ height
	Lots 36-45	frontage site—16′ height
	Lots 46-50	— —24′ height
	Lots 51 and 52	tree site—24′ height
	Lot 53	— —16′ height

II. *Findings and Declarations.*

1. *Description of The Sea Ranch.* The Sea Ranch is a planned residential community which extends approximately 10 miles along the Sonoma County shoreline on both sides of the Coast Highway. Oceanic California, Inc. is the developer of the project. The County of Sonoma approved the necessary zoning changes in two actions: in 1964, for the southerly 1,800 acres, and in 1968, for the remainder of the 5,200-acre property. The overall plan was approved for 5,200 units by the Sonoma County Planning Commission in August, 1972.

The project has been developed in stages. The final subdivision maps for several units had been filed, some residential construction had been completed, and final County approvals had been granted for additional construction when the California Coastal Zone Conservation Act of 1972 (Proposition 20) took effect. Under the Coastal Act of 1972, only part of the development was within the 1,000 yard coastal permit area. The North Central Regional Commission originally granted claims of exemption for the subdivision of 4 units, totalling approximately 400 lots under the 1972 Act. The State Commission, acting under the provisions of the 1976 Act, has filed suit on two of the units ex-

empted earlier, questioning the status of these earlier exemptions.

At present there are 1,770 lots recognized by the Commission as legally subdivided. Approximately 71 of these are outside of the present coastal zone, and 22 lots are bisected by the boundary. Approximately 1,658 of the existing lots are individually owned, and the remainder are still owned by Oceanic. There are approximately 506 existing residential units, mostly single-family houses. Each lot owner, including Oceanic, is by virtue of his or her lot ownership, a member of the Sea Ranch Association which owns all common areas. The common areas include recreational areas, including most of the shoreline, open space, roads, and some septic leachfields. Oceanic California, Inc. retains the Sea Ranch Lodge complex near the south end of the development, the golf course at the north end, the stable area within Unit 36 and the shoreline areas near the Lodge. The company also owns the Sea Ranch Gas & Water Co. which provides water services to the development and maintains service lines. In addition to the proposed subdivision units currently in litigation, Oceanic California, Inc. owns the remainder of the originally planned development.

2. *Number of Lots and Types of Development Committed by these Overall Conditions.* Subject to the overall conditions, the Commission finds it consistent with the requirements of the Coastal Act that one single-family home may be built, on (1) each lot as yet undeveloped of the 1,699 residential lots within the coastal zone that were legally subdivided and in existence prior to the effective date of the Coastal Zone Conservation Act of 1972 (Proposition 20), and (2) each of 259 additional lots within units 35B and C, and 34A, which are in dispute as to their possible exemption from the permit requirements of the Coastal Zone Conser-

vation Act of 1972 (these last as shown on the map prepared and jointly agreed upon by the Commission and Oceanic). No condominium units, additional houses on lots that may be divided under the Sea Ranch restrictions, or additions to existing single-family dwellings are covered by these overall conditions: such proposals shall be the subject of separate permit applications, to be considered by the Commission under the provisions of Chapter 3 of the Coastal Act of 1976. The number of lots on which single-family homes may be built under these overall conditions will thus, together with existing development, bring the buildout of the Sea Ranch to 2,029 single-family dwellings.

> Oceanic may create additional lots in Units 2, 11, or 21, or may subdivide existing condominium-zoned lots in Units 19, 35-A, 35-B, and 35-C, or 36, provided that the total of such lot changes shall not exceed 20 and further provided that for each new lot created, Oceanic shall dedicate to commons an existing lot.

3. *Major Issues.* The major issues presented by the approval of the buildout of 1,958 units in the coastal zone governed by these overall conditions include: (a) the need to provide public access to at least some portions of the oceanfront along the 10 miles of Sea Ranch coast where no usable access now exists; (b) the need to address the impact of total Sea Ranch buildout on the ability of Highway 1 to carry recreational as well as residential traffic; (c) the need to assure an adequate water supply in a manner that protects fish life in coastal streams; (d) the need to assure that the cumulative impact of homes using septic tanks rather than a sewer system will not result in discharges to public tidelands; (e) the need to protect scenic resources by removing trees planted at Sea Ranch in a manner that has reduced or even obliterated scenic ocean views from High-

way 1 and by regulating height, site and bulk of individual homes; (f) the provision of commercial recreation opportunities and (g) the relationship of the proposed buildout to the Local Coastal Program currently being prepared by Sonoma County and to Mendocino County's Local Coastal Program.

4. *Cumulative Impact and Permanence of Overall Conditions.* Virtually all of the above issues are of concern under the Coastal Act because of the cumulative impact of Sea Ranch on coastal resources and coastal access. Accordingly, the Commission's findings must be premised on and addressed to the implications of buildout of the 1,770 lots within the coastal zone currently annexed to the Sea Ranch Association and 259 lots of the 354 located in the subdivisions 34A, 35B, and 35C currently under the ownership of Oceanic, Inc. As did the predecessor Commission in the case of the Avco permit (Appeal No. 134-74), the Commission must base its findings on the assumption that the entire development will build out over time in the manner prescribed by the overall conditions and that these conditions are permanent. The Commission intends the overall conditions set forth above and referenced in these findings to provide the final and conclusive statement of the requirements of the Coastal Act with respect to the buildout of the individual lots discussed above. Any further review of individual permit applications for the lots governed by these overall conditions will be limited to those actions, required by the provisions of the Coastal Act, that are determined by the Commission to be necessary to conform with the requirements of state regulatory agencies, including those agencies charged with the regulation of water quality, water supply and air quality. All other issues raised under the require-

ments of Section 30604(a) are addressed by the findings set forth below.

5. *Public Shoreline Access.* Section 30210 of the Coastal Act emphasizes that maximum public access to the sea is to be provided in new development:

> In carrying out the requirement of Section 2 of Article XV of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 provides:

> Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30604(c) requires the Commission, in permitting new development between the sea and public road system to specifically find the development to be consistent with these policies and the public recreation policies of the Coastal Act.

The Sea Ranch now provides little public access to its 10 mile + shoreline. Oceanic granted Gualala Point Regional Park to Sonoma County, and there are 2 nearby access trails from the Highway to the shoreline, the County's Salal Trail in Unit 35A and a State Fish and Game Commission trail to the Del Mar Preserve in Unit 35C. The Park is at the upcoast end of the 10-mile long development, and

both trails access small coves which provide little lateral access for public use of the shoreline. Access is otherwise restricted to residents and their guests, renters of Sea Ranch homes and visitors to the Sea Ranch Lodge. The Commission cannot find that the present access provisions are consistent with the "maximum access" requirement of Section 30210 of the Coastal Act nor that they are "adequate" as required by Section 30212.

The public access requirements imposed in these overall conditions will provide a varied and proportionate public use of the extensive shoreline. The conditions provide for immediate offers to grant access to 5 widely-separated beach areas: Walk-on and the small adjacent beach, Shell Beach, a beach near the central Sea Ranch stables, Pebble Beach and Blackpoint Beach.

An immediate offer to grant access to a 2.7-mile portion of the Association's blufftop trail is also required.

The Commission emphasizes that the access provisions cannot be diminished and still be found to be consistent with the public access policies of the Coastal Act. Each provision is essential to the Commission's approval of these permits. The beach use requirements will provide for varying public enjoyment of and access to the shoreline, yet will assure that no one area is overused.

Access to Shell and Pebble Beach must, along with the other accessways, be required in order for the Commission to find that the shoreline access provided will be adequate for the single-family buildout of the 2,029 lots covered by the overall conditions. Additionally, the required blufftop trail will provide use of another type, enjoyment of the scenic bluff qualities of this area of the shoreline. The path will connect to the present County Park and one of the required beach accessways at its ends and with the 2 existing

public trails from the highway; the trail will accommodate those among the public who enjoy shoreline hikes, provide additional hiking areas for visitors to Gualala Point Park and the new beach access in Unit 34A and add to the usefulness of the existing public trails.

The required access has been planned so as to minimize conflicts of public use with private residences. Each of the beach accessways to be immediately offered either can be developed physically apart from existing houses and residential lots or would minimize conflicts by limiting the access near residential areas to pedestrians. In the case of the blufftop trail, it is required in a location which will conflict with no existing houses. Only a few lots west of the highway, all in Unit 35A, have been sold to individuals along the entire dedicated trail, and only 2 of those can be considered to front the accessway. Accordingly, nearly all individuals buying lots near the trail will do so aware of the requirement of the public trail and can choose their lots accordingly. No other portion of the Sea Ranch can accommodate a blufftop trail except near existing residences.

The Commission does not intend that the extent of public access to the dedicated beaches be permanently limited to those who can be accommodated by the limited parking required in the overall conditions. The conditions provide for unrestricted pedestrian use of the accessways, and the Commission recognizes that the agency accepting the accessways could, after study of the use of these accessways and the carrying capacity of the dedicated beaches and trail, develop other parking facilities in the area. The provision of such additional parking by other means in the future would be entirely consistent with the Commission's intent in adopting these overall conditions.

The Commission believes, however, that the number and shoreline locations offered for access in these conditions

comprise all of the significant access resources required by the Coastal Act of 1976 for the entire Sea Ranch notwithstanding future development proposals.

6. *Access to Coastal Region.* Section 30254 of the Coastal Act provides in part:

> . . . Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

The section also states the legislature's intent that Highway 1 in rural areas remain a scenic, 2-lane road.

The 70-mile stretch of Highway 1 between the Russian and Navarro Rivers must serve recreational travelers to the area in addition to Sea Ranch residents of the Sonoma County coast and residents of southern Mendocino County. The residences permitted subject to these overall conditions could individually and cumulatively reduce the availability of Highway 1 to recreational travelers, impairing public access to Sonoma and Mendocino Counties' coast. Both Oceanic and Association representatives have in the past disputed that Sea Ranch development will diminish others' access to the highway. The Commission, again, cannot agree. The overall conditions will extend approval to as many as 2,029 residences at the Sea Ranch, which, dependent on the future composition of the community, can be expected to contain 4,000-8,000 residents. The Sea Ranch parties have argued that the present travel patterns indicate no conflicts will occur because residents avoid highway travel during peak hours of recreational travel, when the traffic is heaviest, noting instead that it is recreational travel which congests the highway. However, the traffic which may be

generated by Sea Ranch residents may also depend greatly on whether the development remains a second-home community or becomes, as have other such coastal communities notably in southern California, a permanent residence area. The Commission staff, based on a trip-generation rate of 8 daily trips per home reported by the State Department of Transportation in a study of San Francisco Bay Area residents' recreational travel, has estimated that Sea Ranch traffic will impair peak recreational travel on the highway when buildout reaches 800 units. The Commission recognizes that the staff's study is not conclusive and has already initiated additional traffic studies of the area. However, it is probable, if Sea Ranch becomes a permanent residence area as has happened elsewhere on the coast, that residents' travel patterns may more closely approximate that of urban residents, generating 11-12 trips per household per day. The Commission must also emphasize its responsibility under the Coastal Act to enhance recreational access to the areas served only by this stretch of Highway 1. Accordingly, the Commission must impose conditions requiring the Association and Oceanic to mitigate the effects of the permitted build-out on recreational access to the region.

The overall conditions require 3 important provisions to mitigate the impact of these residences on the highway. First, the Association and Oceanic must offer to dedicate the fire trail just inland of the highway and nearly continuous through the development for use as a public bicycle path. When developed, the bicycle trail separated from the highway could remove bicyclists from the highway, where they frequently cause queueing of traffic on the narrow, winding alignment through the area. Secondly, Oceanic must complete Leeward Road throughout its length, including through the open space area provided in Unit 34A, thus

providing a continuous internal road link seaward of the highway through nearly the entire northerly half of the development. The completed Leeward Road will be an alternative for residents of these units to travel to the Sea Ranch golf course, other residences and to several shoreline areas, eliminating the necessity of making those trips on the highway. Lastly, the Association must agree now to cooperate in a future study of Sea Ranch traffic, and, if the study by traffic experts indicates that revisions of some Sea Ranch road patterns would improve flow on the highway by removing internal Sea Ranch trips from it, dedicate small areas of the Association commons for new roadway links and agree to the revisions. This requirement will leave the possibility of connecting roads in the southerly portion of the development, modifying the present pattern of cul-de-sacs in each area, each with an access to the highway which must function as the primary Sea Ranch arterial as well as serve other traffic.

In addition to the local circulation improvements discussed above, significant benefits for public access to the northern Sonoma coast would result from two other features of the proposed conditions. First, under the overall conditions only 2,029 units can be developed as contrasted with the 5,200 units originally approved by the County. Additional units will be permitted only if specifically provided for in a certified Sonoma County local coastal program.

Second, the proposed conditions provide access to beaches and bluff area previously inaccessible to the public. The public access conditions required by these overall conditions provide for a system of public access that is both meaningful in terms of future public use and yet at the same time limits any use conflict with already existing lots. The scope of public access and the balancing of private and public interests provides a marked contrast with the barriers

to public access maintained by the locked gate communities in other areas of the coast such as Orange County and Santa Barbara County. Section 30007.5 of the Coastal Act provides:

> The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.

Taking into account the reduction in potential future units and the provision of significant direct access to beaches and bluffs, it can be found that these factors offset the potential adverse impact on road access from buildout and that therefore the overall conditions can be approved consistent with Section 30007.5 of the Act. It is the intent of these overall conditions to provide as much certainty and permanence as possible for all parties with regard to public access to the tidelands off the Sea Ranch coast. Because no further subdivision of lands between Highway 1 and the ocean is covered by this agreement, the Commission is able to find that, given the divisions of land at Sea Ranch prior to the effective date of the 1972 Coastal Act, and because overall conditions provide for public access to all areas seaward of Route 1 to which access can be reasonably provided, the provisions of this agreement satisfy the access requirements of the Coastal Act of 1976 with respect to the lots governed by these overall conditions.

7. *Water Supply.*

Section 30250(a) of the Coastal Act provides in part:

> . . . new development . . . shall be located . . . where it will not have significant adverse effects, either individually or cumulatively, on coastal resources . . .

Section 30231 provides:

> The biological productivity and quality of coastal waters . . . shall be maintained and, where feasible, restored through, among other means . . . preventing depletion of groundwater supplies and substantial interference with surface water flow . . .

Water is presently supplied to the Sea Ranch solely by a Sea Ranch Water Company well at the south fork of the Gualala River, inland of the Sea Ranch. The River fork is an important steelhead spawning run. The permit for the diversion was granted to the Water Company, which is owned by Oceanic, in the 1960s subject to conditions recommended by the Department of Fish and Game to protect the fish run. After a lengthy dispute as to the specific meaning of the conditions on the diversion permit, the State Water Resources Control Board recently found that with the present method of withdrawal water could not be supplied to the Sea Ranch during summertime lowflow in the river consistent with the intent of Term 14 of the Company's diversion permit. Thus, the present water facilities are insufficient to meet the foreseeable needs of both the fishery and Sea Ranch development. Accordingly, the SWRCB directed the Sea Ranch Water Company to propose an alternative to meet the development's needs consistent with the needs of the fishery. Oceanic has done so, proposing a second diversion be allowed from the lagoon near the Gualala River mouth, below the confluence of the north and south forks. The SWRCB is evaluating that proposal. Another possible alternative would be construction of a reservoir to store winter river flows for use when the present well cannot be operated under Term 14 of the diversion permit.

The Commission recognizes that any determination of water rights by the Water Board in the current proceeding

will, in accordance with Section 30412(b) of the Coastal Act, be binding upon the Commission as well as on Oceanic. The Commission will participate in the Water Board's proceedings in the same manner as other State agencies may participate but the Commission will be bound by the Board's decision.

While it is the Board's prerogative to approve or disapprove alternatives which might be suggested by the Water Company, the Commission must consider the inadequacy, identified by the Board, of the present water supply and fulfill its responsibility under the Coastal Act to assure that new development not exceed the available water. The Commission must, as required by Section 30231, assure also that the manner of withdrawals will protect the fishery and that new residential development will not require withdrawals which will be damaging to the fishery resource of the Gualala River. Under State law providing for a higher priority for residential use over wildlife needs, continued withdrawals have been allowed for Sea Ranch use despite the potential for adverse impacts on fishery resources. As the State Water Resources Control Board has found in dealing with the current Sea Ranch withdrawals:

> Based on such factors as permittee's reliance on its interpretation of Term 14, the fact that domestic use of water is the highest use of water in the State (Water Code Section 1254), and the fact that no alternative source of water is presently available, permittee will be permitted to *continue to divert for its needs* until such time as an alternative supply can be developed as specified below. We realize that this is unusual but feel it *appropriate based on the realities of the permittee's reliance on its present supplies.* (Order WR 77-12, State Water Resources Control Board, October 20, 1977, emphasis added.)

Accordingly, the overall conditions above do not authorize construction of any house for which water cannot be adequately provided in a manner protecting the fish resources. The Commission must, under the Coastal Act, deny permits for any development for which water cannot be so provided. Accordingly, the Commission emphasizes that it can, entirely consistent with the overall conditions, deny permits for houses which cannot be served water consistent with the provisions of Chapter 3 of the Coastal Act, upon making a specific finding of the inadequacy of the then-existing water supply, as provided in the first of the overall conditions. This condition is necessary in order for the Commission to find the approvals of so many houses consistent with the above sections of the Coastal Act.

If the Water Board determines that enough water can be safely withdrawn to serve the buildout of the lots held in individual ownership, such a finding would meet the requirements of the Coastal Act. If the State Water Resources Control Board requires either construction of a water storage system or obtaining other sources of water, such actions would be necessary pre-conditions to the buildout provided in the overall conditions.

The Commission recognizes that a water reservoir may at some time be proposed for the Sea Ranch, and the Commission states that its review of a permit application for such a reservoir would be limited, in accordance with the provisions of the Coastal Act, to direct site impacts—such as possible effects on coastal wildlife habitat and coastal views—and would not deal with water supply issues that are the responsibility of the State Water Resources Control Board. Should a reservoir prove necessary, the Commission will work with Oceanic and the Association in an effort to find an acceptable site and provide adequate water to Sea Ranch.

8. *Septic Tank Monitoring.* Section 30231 also requires that the quality of coastal waters be maintained by minimizing adverse effects of waste water discharges. Most of the homes proposed in these appeals and homes, the great majority of Sea Ranch lots, would depend on individual septic tanks for sewage disposal. The overall conditions would extend to all of the present lots and to 259 others; several hundreds of these will be on the terrace seaward of the highway. Both the Regional Water Quality Control Board and the County Office of Environmental Health have expressed concern for the impact septic system discharges may have on coastal waters as the area builds out. Such discharges could be harmful to marine life in the nearshore area and could, as was the case in Mendocino in the recent past, result in precluding public use of the shoreline.

The Commission recognizes that the State Water Board and its Regional Boards have the responsibility for establishing water-quality standards. Accordingly, as the overall conditions provide, the Commission will be bound by the Board's determinations of the impacts of Sea Ranch septic systems. The Commission must, however, assure that the extensive development to which the overall conditions will apply will be consistent with Section 30231 of the Coastal Act. Accordingly, the conditions require the Association to establish septic tank discharge standards and a monitoring system approved by the Regional Water Board. The Association has submitted a monitoring proposal to the Board, which was found by the Board staff to be satisfactory. However, although the Association has asserted that it can enforce these requirements, it has not demonstrated that it, in fact, is empowered to do so. The Commission must be assured not only of the Association's agreement to carry out the monitoring and enforcement

of discharge standards but of its power to do so. The legislature has enacted a comprehensive system for assuring the satisfactory performance of septic systems in S. B. 430 (Exhibit 4). The Commission finds that compliance with S. B. 430 will assure the necessary enforcement and will, therefore, satisfy the requirements of Section 30231 of the Coastal Act.

9. *Scenic Resources.* Section 30251 of the Coastal Act states that "the scenic and visual qualities of coastal areas shall be considered and protected . . . permitted development shall be sited and designed to protect views to and along the ocean and coastal and scenic coastal areas . . ." The plantings, such as pine trees, and other landscaping placed originally by Oceanic California, Inc., and subsequently managed by the Sea Ranch Association, have grown to block seaward and along-coast views from Highway 1, and structures built seaward of the highway or in the public view inland of the highway may unnecessarily intrude into the public view due to height, bulk, or location on the lot.

Even with the buildout of the Sea Ranch, this portion of the coast affords scenic qualities worthy of protection under Section 30251 of the Coastal Act. The Commission stresses that the tree removal is required to restore views once readily available to the public rather than to open new views. The Sea Ranch landscaping plans, while perhaps well designed for the amenity of residents, have cut the public off from the awareness of the varied coastline and the ocean which once prevailed. The restoration of views of the ocean and the shoreline and their maintenance as required in the overall agreement is necessary in order to find the continued development at Sea Ranch consistent with the Coastal Act.

The overall conditions also include standards for the height, siting, and bulk of individual houses under which they will, absent water supply or septic discharge deficiencies at the Sea Ranch, be considered as consent calendar items by the Commission. Houses meeting the standards specified for their respective sites will be consistent with Section 30251. The Commission emphasizes that it makes no conclusion that larger or differently-sited houses will be inconsistent with Section 30251; the Commission finds only that such house designs may require public hearings in order for the Regional Commission to determine if they will be consistent with this provision.

10. *Local Coastal Program Process.* Proposals for additional development beyond that covered by this agreement will be considered as part of the preparation of the Local Coastal Program. The provisions of these conditions are to be reflected in the Local Ccastal Program. The Commission expresses no opinion as to whether a certified Local Coastal Program for Sonoma County will include more lots at Sea Ranch than those covered by this agreement. The Commission makes clear, however, that a determination of that issue will be based in part on the cumulative traffic impact of existing and proposed development along Highway 1, between the Russian and Navarro Rivers. Because this section of the Highway in both Mendocino and Sonoma Counties, the State for the Regional Commission or the Commission on appeal to determine if they will be consistent with this provision.

11. *Requirement of Overall Agreement.* The Commission must, in order to grant individuals' permits, find them entirely consistent with the provisions of Chapter 3 of the Coastal Act; in extending this approval to extensive future development, the Commission must likewise find the build-

out consistent with the Act. As these findings state, the Commission can do so only by imposing conditions which it can be assured will be fulfilled. Oceanic, the developer of the Sea Ranch, and the Sea Ranch Association, the representative of Sea Ranch property owners including the applicants, can together fulfill the overall conditions. Upon their agreement to do so, individual permits may be exercised. The Commission has renewed its scrutiny of the coastal issues, first identified by the predecessor Regional and State Commissions fully four years ago and has made substantial modifications in the terms of the necessary overall agreement. But the issues raised by Sea Ranch are unchanged. Both the Regional Commission and this Commission, under Proposition 20 and under the Coastal Act of 1976, have without variation found that overall resolution of the issues by agreement of Oceanic and the Association would be necessary. The alternative of deposits made by applicants to insure a program to eliminate these impacts of Sea Ranch has resulted at this point in 100 additional residences but in no actions completed by Sea Ranch interests to resolve Coastal Act concerns. Clearly, the Commission cannot find that continued development at Sea Ranch without resolution of issues identified four years ago would be consistent with the Coastal Act. In contrast, fulfillment of the overall conditions would allow development consistent with the Coastal Act to proceed. Not only the present applicants but those who will wish to build on their lots in the future could do so. It would additionally fulfill the primary intent of the predecessor Commission and this Commission in previous approvals of houses. Accordingly, the Commission will, upon satisfactory completion of the overall conditions by Oceanic and the Association, immediately return the deposits of earlier applicants.

Motion to Dismiss or Affirm

1

No. 81-335

In the Supreme Court of the United States

OCTOBER TERM 1981

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THE SEA RANCH ASSOCIATION, a California nonprofit corporation, *et al.*,

Appellants,

v.

CALIFORNIA COASTAL COMMISSION, *et al.*,

Appellees.

On Appeal from the United States District Court for the Northern District of California

Motion To Dismiss Or Affirm of Appellees California Coastal Commission and Its Commissioners

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OCTOBER TERM 1981

THE SEA RANCH ASSOCIATION, a California nonprofit corporation, *et al.*,
Appellants,

v.

CALIFORNIA COASTAL COMMISSION, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Motion To Dismiss Or Affirm of Appellees California Coastal Commission and Its Commissioners

MOTION TO DISMISS OR AFFIRM

1. Appellees California Coastal Commission and its members move to dismiss the appeal now pending on the ground that jurisdiction does not lie under 28 U.S.C. section 1253, in that section 1253 authorizes an appeal to this Court only from an order of a three-judge District Court "granting or denying . . . an interlocutory or permanent injunction. . . ." No such specific order was entered in this case.

2. The State appellees further move to dismiss the appeal without prejudice to possible later redocketing of the

appeal. The case has been settled between the parties to this appeal, but the settlement has not become effective because of litigation instituted in the California State courts by a third-party challenging the validity of the settlement. If the State courts uphold the validity of the settlement, this appeal will be moot and will be voluntarily dismissed by the appellants. Consideration of the appeal at this time is, therefore, inappropriate, and the appeal should be dismissed without prejudice to later redocketing in the event that the State courts sustain the challenge to the settlement.

3. In the alternative, the State appellees move to affirm the judgment of the District Court, on the ground that the questions on which the decision of the cause depends are insubstantial and do not require further argument. The same issues have already been presented to this Court in the recent appeals of *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, et al.*, 404 U.S. 878 (1971) and *Jordan, et al. v. Village of Menomonee Falls*, 385 U.S. 4 (1966), and each of the appeals was dismissed for want of a substantial federal question. These issues were also presented in *Frisco Land & Mining Co. v. State of California*, and certiorari was denied, 436 U.S. 918 (1978). The land use regulations here at issue are valid regulations consistent with the United States Constitution and do not constitute a taking of property or deprivation of due process.

STATEMENT OF THE CASE

In November 1972, the People of the State of California enacted by initiative the California Coastal Zone Conservation Act (former Cal. Pub. Resources Code section 27000, *et seq.*) to protect the California coastline, an environmental and recreational resource of the State, which had

not adequately been protected by local governmental regulation.

The California Coastal Zone Conservation Commission was created to provide a statewide perspective on coastal management issues. To assist the Coastal Zone Conservation Commission in formulating policy and in reviewing permits for development, six regional commissions were established. The North Central Coast Regional Coastal Zone Conservation Commission was formed to plan for and to regulate development in the coastal zone in the counties of San Francisco, Marin and Sonoma.

In response to the public mandate expressed in the initiative, the Coastal Zone Conservation Commission and the regional commissions reviewed all new development along the coast for consistency with the Act. Permits were required for all new development at The Sea Ranch, a residential development which stretches along approximately 10 miles of the Sonoma County coastline. The developer of The Sea Ranch, Oceanic California Inc., filed suit challenging denial of an exemption by the Coastal Zone Conservation Commission from its regulatory and permit controls. Oceanic California Inc. claimed a project-wide exemption from the Act in that it had a vested right to complete development of The Sea Ranch. Simultaneously, The Sea Ranch Association, the homeowners' non-profit corporation consisting of all owners of lots at The Sea Ranch, filed suit in federal court challenging the Commission's authority to regulate development and to require permits.

The District Court abstained until the completion of the State court action. *The Sea Ranch Association, et al. v. California Coastal Zone Conservation Commission, et al.*, 396 F.Supp. 533 (N.D.Cal. 1975), aff'd, 537 F.2d 1058 (9th Cir. 1976). The California courts subsequently held that

Oceanic California had no vested rights at The Sea Ranch which would require a project-wide exemption of the development at The Sea Ranch from the regulatory and permit authority of the Commission. *Oceanic California, Inc v. North Central Coast Regional Commission*, 63 Cal. App.3d 57 (1976), *cert. denied* and appeal dismissed, 431 U.S. 951 (1977).

Effective January 1, 1977, the Coastal Zone Conservation Act expired and the Coastal Act of 1976 (Cal. Pub. Resources Code, section 30000, *et seq.*) was enacted in its place. The California Coastal Commission (hereafter "the State Commission") replaced the Coastal Zone Conservation Commission, and the North Central Coast Regional Commission (hereafter "Regional Commission") replaced the North Central Coast Regional Coastal Zone Conservation Commission. Thereafter, the conditions which had been formulated by the Coastal Zone Conservation Commission in reviewing the numerous permit applications for single-family residential development at The Sea Ranch for approval consistent with the Coastal Zone Conservation Act were revised as necessary to be consistent with the Coastal Act of 1976. These "Overall Conditions" reached their final form in March 1979, when the State Commission approved them for imposition as conditions on all development permits to be issued by the Regional Commission and State Commission, for further residential development at The Sea Ranch.

The Overall Conditions address the specific coastal resource management issues in the Coastal Act. App. G. Substantial public access would be provided pursuant to the mandate expressed in the Coastal Act sections 30210, 30211 and 30212. App. G, 75-81; App. F, 46-48. Scenic and visual qualities of the coast would be preserved by development

conditions in response to the mandate in Coastal Act section 30251. App. G, 86-87; App. F, 48. Adequate water and sewer services would be provided in accordance with Coastal Act section 30254 to ensure protection of coastal resources. App. G, 81-87; App. F, 49. The Overall Conditions thus are a specific response to the Coastal Act mandate, based on coastal needs and issues at The Sea Ranch studied by the State and Regional Commissions as they processed permit applications for development at The Sea Ranch.

Subsequently, The Sea Ranch Association amended its complaint. The issues stressed shifted from vested rights to the unconstitutionality of the Overall Conditions. The Sea Ranch Association moved for partial summary judgment. The State Commission countered with a motion for dismissal, or in the alternative, abstention. The motions were heard by the three-judge District Court in April 1979.

In October 1980, the California Legislature enacted Public Resources Code section 30610.6 (App. 1), because "it is in the public interest to provide by statute for resolution of the lengthy and bitter dispute involving development of existing legal lots . . . [at] the Sea Ranch." Cal.Pub. Resources Code section 30610.6. The provisions of section 30610.6 are substantially identical to the terms of the Overall Conditions. The Legislature provided *inter alia* for immediate conveyance of all the easements for public access required by the Overall Conditions to the State, establishment of height and bulk criteria for construction in specific scenic view areas, cessation of further permit requirements for single-family home development on legally existing lots, and payment of $500,000 to The Sea Ranch Association. In order to avail themselves of this compromise solution, section 30610.6 required that the deeds for the easements be placed in an escrow before July 1, 1981.

Shortly thereafter, The Sea Ranch Association held a plebiscite to determine whether its members desired to settle the dispute pursuant to the legislative compromise or wished to wait for the federal decision. The membership chose to wait for the federal decision.

In April 1981, the three-judge District Court ruled in favor of the Coastal Commission, treating its motion as a motion for summary judgment. App. A, 3. The Court found that "public access and aesthetic considerations constitute areas that legitimately fall within the Commission's regulatory power [and] . . . that the Commission would be in violation of the policies and its duties as spelled out under the Act if it had not formulated or imposed the [Overall Conditions]." App. A, 5-6. The Court looked to the general goals of the statute and ruled that the conditions were reasonably related to the public need for the regulation. App. A, 9. Imposing conditions which could only be satisfied by The Sea Ranch Association was reasonable in view of the fact that The Sea Ranch Association was established to provide a body for management of common areas and facilities. App. A, 12-13. After reviewing the record, the Court held that all the conditions were reasonable, responsive to Coastal Act mandates and supported by substantial evidence. App. A, 14-17.

Following the District Court decision, The Sea Ranch Association began steps to accept the legislative settlement of the dispute with the State Commission. The required escrow was opened June 29, 1981 and closed July 24, 1981. In accordance with the terms of section 30610.6, The Sea Ranch Association has conveyed title which has been recorded to all the easements provided for in the Overall Conditions, permit authority by the Coastal Commission has ceased, construction has resumed at The Sea Ranch on num-

erous lots, and the $500,000 has been paid. The Overall Conditions have been effected through implementation of section 30610.6. No further dispute remains between The Sea Ranch Association, its individual members, and the Coastal Commission. The Sea Ranch Association has signed and given to the State a stipulation to dismiss the appeal in this case under Rule 53.

Suit has been filed, however, in the California State courts challenging this settlement as violating several provisions of the California Constitution. Until this State proceeding is dismissed or a final judgment validating the settlement is rendered, the stipulation to dismiss this appeal cannot be filed. Implementation of section 30610.6, however, continues and construction of new single-family homes proceeds at The Sea Ranch without further permit requirements or restrictions by the Coastal Commission.

I. JURISDICTION DOES NOT LIE UNDER 28 U.S.C. SECTION 1253, SINCE THE APPEAL HAS NOT BEEN TAKEN FROM AN ORDER "GRANTING OR DENYING . . . AN INTERLOCUTORY OR PERMANENT INJUNCTION . . ."

28 U.S.C. section 1253 permits an appeal to this Court only from an order of a three-judge court "granting or denying . . . an interlocutory or permanent injunction. . . ." No such specific order was entered in this case, and the appeal should, therefore, be dismissed for want of jurisdiction.

The appellants' complaint sought declaratory and injunctive relief. App. A, 2. The District Court granted the appellees' motion for summary judgment, without specific reference to the request for injunctive relief. Instead, the Court declared only:

> "Since we previously found the method of enforcing compliance with these conditions to be valid, and now find the remaining conditions valid, plaintiffs, have no further basis for a claim before this court. Accordingly,

summary judgment is hereby ordered in favor of the defendants and the case is dismissed." App. A, 17.

The judgment subsequently entered likewise contains no specific reference to the request for injunctive relief, but orders only "in accordance with the opinion filed herein, that summary judgment is entered in favor of defendants, [and] that the case is dismissed with prejudice...." App. D, 41.

Under these circumstances, jurisdiction over the appeal from the judgment does not lie under 28 U.S.C. section 1253. As in *Rockefeller v. Catholic Medical Center*, 397 U.S. 820 (1970), "[t]he judgment appealed from does not include an order granting or denying an interlocutory or permanent injunction and is therefore not appealable to this Court under 28 U.SC. § 1253." The judgment at most denies only declaratory relief, but section 1253 "does not authorize an appeal from the grant or denial of declaratory relief alone." *Gerstein v. Coe*, 417 U.S. 279 (1974); *Mitchell v. Donovan*, 398 U.S. 427 (1970); *Gunn v. University Committee*, 399 U.S. 383 (1970).

It might be suggested that the intent of the judgment was to deny all relief to the appellants, including an injunction. But the Court has stressed that "the three-judge court legislation is not 'a measure of broad social policy to be construed with great liberality,' but is rather 'an enactment technical in the strict sense of the term and to be applied as such'" and that the "Court's jurisdiction under that legislation is to be literally construed." *Mitchell v. Donovan, supra*, 398 U.S. 427, 431; *Phillips v. United States*, 312 U.S. 246, 251 (1941). The Court has also emphasized that "'its jurisdiction under the Three-Judge Court Act is to be narrowly construed since "any loose construction of the re-

quirements of [the Act] would defeat the purposes of Congress . . . to keep within narrow confines our appellate docket.'" *Gunn v. University Committee, supra,* 399 U.S. 383, 387. 28 U.S.C. section 1253 must, therefore, be read as requiring a specific order either granting or denying an injunction as a basis for this Court's jurisdiction. Since no such order was entered in this case, the appeal should be dismissed for want of jurisdiction.

II. THE APPEAL SHOULD BE DISMISSED WITHOUT PREJUDICE TO POSSIBLE LATER REDOCKETING

The basis of the appeal is the conditions imposed by the California Coastal Commission on development at The Sea Ranch, and the contention that the condition requiring dedication of certain recreational easements is an unconstitutional taking of property without compensation. As noted above, however, the California Legislature enacted a bill specifically designed to settle the litigation; the legislation provides for the acquisition of certain easements and other property rights for public recreational purposes, and for the payment of $500,000 to the appellant Sea Ranch Association. Cal. Pub. Resources Code section 30610.6, App. 1. The appellants accepted the terms offered by that legislation, and an escrow was subsequently opened and closed under which both the deeds and the compensation necessary to satisfy the legislation were conveyed.

A third entity, not a party to this appeal, has commenced litigation in the California Superior Court challenging the validity of the settlement legislation under various California constitutional provisions. Had that State court litigation not been commenced, this appeal clearly would have become moot because of the settlement. *Stewart v. Southern Ry. Co.,* 315 U.S. 283 and 784 (1942); *J. Aron and Co. v.*

Mississippi Shipping Co., 361 U.S. 115 (1959); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412 (1972). Indeed, as noted, the parties have stipulated that the appeal will be voluntarily dismissed under Rule 53 of this Court, if that litigation is favorably terminated or dismissed.

Moreover, notwithstanding the pendency of the State court litigation, the parties here have proceeded to implement the settlement legislation. At this time, the appellants, as well as all other owners of individual lots, are entitled to proceed with development of their properties at The Sea Ranch. Under the settlement legislation, no further permits are required from the appellee California Coastal Commission.[1]

The case and controversy between the parties has thus ended. The appellants are prosecuting this appeal only to preserve their rights in the event of an adverse State court ruling. Under these circumstances, however, disposition of that appeal on the merits is inappropriate. The Court should, therefore, dismiss the appeal without prejudice to later redocketing in the event that the State courts sustain the challenge to the settlement legislation. Cf. *All American Airways v. U.A.L.*, 364 U.S. 297 (1960).

III. JUDGMENT SHOULD BE AFFIRMED BECAUSE THE FEDERAL QUESTIONS ARE NOT SUFFICIENTLY SUBSTANTIAL TO REQUIRE ARGUMENT

The issue before this Court is the rudimentary question which earlier has been brought before this Court in various factual contexts, whether a State agency or local governmental body has validly exercised the police power in regulating a particular land use. See, e.g., *Agins v. Tiburon*,

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1. The parties have also agreed to the return of both the deeds and the compensation in the event of an adverse State court ruling.

447 U.S. 255 (1980); *Euclid v. Ambler Co.*, 272 U.S. 365 (1926). As stated by this Court in *Agins, supra,* at 261, the determination whether governmental action regulating land use constitutes a taking of private property without compensation requires a balancing of public and private interests. The land use regulation will be upheld as constitutional and not constitute a taking if it bears a "substantial relationship to the public welfare," advances "legitimate governmental goals" and does not deny an owner "economically viable use of his land." *Id.*, at 260, 261. This Court in one of its earliest pronouncements concerning the reasonableness of land use regulation succinctly stated in *Nectow v. Cambridge,* 277 U.S. 183, 187-188 (1928) that

> "a court should not set aside the determination of public officers in such a [zoning] matter unless it is clear that their action 'has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare. . . .'"

The presumption of a valid governmental regulation must be upheld unless appellants show the regulation is arbitrary and *totally* unrelated to the general welfare.

The District Court found that the Overall Conditions did have a valid governmental purpose and, consequently, were related to the public welfare. In view of this rule of law that each individual police power case must be decided on its own merits as to whether an exercise of the police power has violated the Federal Constitution, appellants' assertion of "broad impact beyond the specific context of the California Coastal Act" (Jurisdictional Statement, 9) miscasts the particularized judicial review inherent in any challenge, such as the District Court afforded in this case, to an exercise of the police power.

A summary affirmance of the judgment is warranted because no substantive new law would result from this Court's review of the specific facts of this case. The decision below is consistent with U.S. Supreme Court precedent as to valid exercise of the police power and with State law precedent describing the property interests at issue and so should be affirmed.

A. The Supreme Court Has Already Reviewed These Same Issues.

Appellants have formulated four questions for this appeal. The first and third state in slightly different language the question whether or not a dedication, without compensation, of land for public use may constitutionally be required pursuant to State statute as a condition for land development. Cases involving this issue have been appealed twice in the recent past to the Supreme Court.

The appeal was dismissed for want of a substantial federal question in *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, et al., supra,* 404 U.S. 878. In *Associated Home Builders,* the California Supreme Court upheld the constitutionality of a State statute which required mandatory dedication of land or payment of in-lieu fees for park and recreational purposes as a condition to approval of a subdivision map. On appeal, the appellant argued that mandatory dedication or in-lieu fees for park purposes resulted in a taking of the subdivider's private property for public use without just compensation.

Likewise, the Court dismissed for want of a substantial federal question the appeal in *Jordan, et al. v. Village of Menomonee Falls,* 385 U.S. 4 (1966). In *Jordan,* the Supreme Court of Wisconsin upheld the validity of the ordinance of the Village of Menomonee Falls which required a landowner to dedicate to the Village land for schools, parks

and recreational purposes or pay an in-lieu fee as a condition of approval for a subdivision. The appellants there too raised the question whether such mandatory dedication or in-lieu fee requirements for approval of a subdivision constituted a taking of private property without adequate compensation.

Although each of these cases arose in the context of a governmental entity's approval of a subdivision map, no significant legal difference between this factual situation and the conditioning of approval of a development permit may be stated. A subdivision approval, as a permit approval, is an exercise of the police power. In both situations, the sole issue is whether the conditions are a proper exercise of the police power or constitute a taking of private property without just compensation. No complicated factual situation differentiates the law applicable to this case from that applicable to these prior appeals which were dismissed.

The second and fourth questions involve the issue whether a State may constitutionally condition a permit such that the conditions can only be satisfied by a third person. This same issue has recently been presented in a petition for certiorari which was denied in *Frisco Land & Mining Co. v. State of California*, 436 U.S. 918 (1978). In *Frisco Land & Mining Co.*, the California Court of Appeal upheld the power of the North Central Coast Regional Commission to condition the issuance of a "blanket permit"[2] for home construction in the Oceana Marin Subdivision, *inter alia*, on provision of beach access, erosion control and maintenance of common lands. Despite the developer's arguments that the imposition of such third party conditions made the lots unsaleable, the Court held that these

2. Development of all lots within specified areas of the subdivision would be approved pursuant to the permit.

conditions, as subdivision approval requirements for dedication of land, were a reasonable exercise of the police power. *Frisco Land & Mining Co. v. State of California*, 74 Cal.App.3d 736, 753-754 (1977). In its application for certiorari, the petitioner raised several questions, including the question whether a condition for public access across property not owned by petitioner constituted inverse condemnation. Until this condition was met, petitioner asserted that he was denied *all* use of his property without just compensation.

This appeal raises no issues which have not already been reviewed by the Supreme Court. The validity of police power regulation of residential development requiring a dedication of land for public recreational use, whether the condition is to be met by the permit applicant or by a third party, has been before this Court before. The legal principles are identical; thus, no reason for further briefing or review exists.

B. The Regulation of Land Use at The Sea Ranch Is a Proper Exercise of the Police Power, Not a Taking of Private Property Without Just Compensation.

Appellants argue that the Coastal Commission had no legitimate interest in requiring the dedication of public beaches and recreational areas at The Sea Ranch. Jurisdictional Statement, 11. Appellants postulate that any land use regulation which causes a landowner's property to be used for public recreational purposes is an invalid taking of private property. Jurisdictional Statement, 13.

The general law relating to improper exercise of the police power does not set forth a rule that a taking is triggered automatically by a development permit condition requiring dedication of land for public recreational purposes. Instead, the general rule, as stated above and in

Berman v. Parker, 348 U.S. 26, 32 (1954), necessitates a review of the factual findings and determinations of the governmental body in exercising the police power.

> "An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia [cite] or the States legislating concerning local affairs. [cites]"

The court below followed the procedural roadmap described in *Berman* and reviewed the facts evidencing the public interest in the challenged regulation and the findings of the State Commission and the Regional Commission in promulgating the Overall Conditions. App.A.

The California Legislature spoke clearly when it enacted the Coastal Act. All new development in the coastal zone requires a permit, and permits cannot be issued where development would "interfere with the public's right of access to the sea." Pub. Resources Code section 30211, App. F, 46; see also Pub. Resources Code section 30212, App.F, 47. The public has a State constitutional right of access to the sea. CalConst. Art. X, section 4, Article X, section 4 of the California Constitution provides:

> "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way

> to such water whenever it is required for any public purpose, . . . and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

Thus, the Coastal Act delineates the public's expectation of access to the tidelands, derived both from the California Constitution and from the equal footing doctrine applied to sovereign lands, as expressed, e.g., in *Pollard's Lessee v. Hagan*, 3 How. 212, 223, 229 (1845); *Weber v. Harbor Commissioners*, 18 Wall. 57, 65-66 (1873); *Packer v. Bird*, 137 U.S. 661, 666 (1891); *Shively v. Bowlby*, 152 U.S. 1, 57 (1894); *Borax, Ltd. v. Los Angeles*, 296 U.S. 10, 15, 22 (1935). From the earliest days of California statehood, the People of the State of California have possessed the tidelands and a concurrent right of access to the tidelands. See, *Marks v. Whitney*, 6 Cal.3d 251 (1971).

As population has grown and development along California's coastline expanded, the People of the State recognized that their right of access to the tidelands was being threatened by the private construction along the coastline and enacted in November 1972 a coastal initiative to protect the public interest in the coastal zone. In reenacting coastal protections in 1976, the Legislature found that the public's interest required further protection and so mandated that public access be considered specifically in every permit authorization. The public would be shut out of their property with no right of access if appellant's theory excluding public access to the coastline were accepted.

Appellants contend that the "investment-backed expectations" of lot owners at The Sea Ranch cannot be disturbed by application of the Coastal Act to their lots, which were

"legally subdivided, zoned, and sold to individuals as homesites *before* the adoption of the Coastal Act or its predecessor, the 1972 Act." Jurisdictional Statement, 14, 20-21.[3] Appellants mistakenly rely on this Court's ruling in *Kaiser Aetna v. United States*, 444 U.S. 164 (1979), that reasonable investment-backed expectations of Kaiser Aetna would have been frustrated if public access had been required when the private developer opened a pond, which had always been viewed by Hawaiian State law as private property, to navigable waters. The facts in this case are clearly distinguishable from those in *Kaiser Aetna*. As indicated above, a private property owner at The Sea Ranch had no reasonable expectation of being able to exclude the public from reason-

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3. Appellants' argument sounds in a vested right to build theory which has already been determined in the California Appellate Court to be baseless. *Oceanic California, Inc. v. North Central Coast Regional Commission*, *supra*, 63 Cal.App.3d 57, *cert.* den. and appeal dismissed, 431 U.S. 951. As stated above in the Statement of the Case, the Ninth Circuit earlier abstained from any determination of vested rights in this case until the State courts had interpreted State law as to the vesting of any rights to complete The Sea Ranch development without coastal permits. To the extent that appellants' Jurisdictional Statement reargues what rights vested in property owners at The Sea Ranch before the Coastal Act was adopted, this issue has been finally determined in State court and this Court has already denied further review.

Further, under California law, a property owner has no vested right to unchanging zoning of his property. *HFH, Ltd. v. Superior Court*, 15 Cal.3d 508, 522-523 (1975) *cert.* den., 425 U.S. 904 (1976); *Toso v. City of Santa Barbara*, 101 Cal.App.3d 934, 944 (1980), *cert.* den., 449 U.S. 901 (1980); see also *Hadacheck v. Sebastian*, 239 U.S. 394 (1915). By zoning the property, the government does not contract in any way with the landowner that the landowner will be governed only by the laws in existence at the time the property is purchased and exempt from laws in effect at the time a development permit is sought. *Avco Community Developers, Inc. v. South Coast Regional Com.*, 17 Cal.3d 785 (1976), app. dism'd and *cert.* den., 429 U.S. 1083 (1977). Thus, under California law a property owner could not reasonably expect after November 1972 to be able to develop his property at The Sea Ranch without compliance with the Coastal Act.

able access to the public's tidelands, even before enactment of the Coastal Act. Moreover, The Sea Ranch property owner knew at all times that permits to build individual homes were required and thus that any future development was subject to reasonable exercises of the police power. No such additional governmental approval was at issue in *Kaiser Aetna.*

As stated by this Court in *PruneYard Shopping Center v. Robins,* 447 U.S. 74, 84 (1980), an unconstitutional taking of private property cannot occur unless the State has first defined "property" so as to include the purported right taken. Although protected by the Federal Constitution, "property" is not defined by the Federal Constitution. Instead, "property" has been left to State law for definition. See, e.g., *Swift v. Tyson,* 16 Pet. 1, 18-19 (1842); *State Land Board v. Corvallis Sand & Gravel Co.,* 429 U.S. 363, 378 (1977); *Kaiser Aetna v. United States, supra,* 444 U.S. 179.

Once the determination is made pursuant to State law that a property right is at issue, the question becomes whether or not the governmental action complained of, in fact, substantially deprived the property owner of the State-defined property right. In making this determination, the appropriate standard of review was explained in *Prune-Yard, supra,* 447 U.S. 84, another case where a property owner's right to exclude the public was at issue. This Court held that a taking of private property does not result unless the landowner "demonstrate[s] that the 'right to exclude others' is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a 'taking.'" *Id.*

As the District Court determined, property owners at The Sea Ranch were not deprived of any substantial property right. The California Constitution requires public

access to the seas, and the Coastal Act provides a statutory procedure for guaranteeing that this Constitutional right of access will be protected. App. A, 4-6. The District Court found that "failure to implement these conditions would result in loss of public access and views on a substantial portion of the northern California coastline. Moreover, the gradual build-out at Sea Ranch, and like developments in the region, with the likely attendant increase in local population and tourism, will increase the existing need for public access." App. A, 10. The District Court expressly found that the Overall Conditions were supported by substantial evidence before the State and Regional Commissions and were, in fact, reasonably related to the Constitutional and statutory mandates for public access. App. A, 14-17.

The need for planning and zoning to address area growth in the context of developing public social needs has already been judicially accepted as a proper police power objective. For example, this Court in *Hadacheck v. Sebastian, supra*, 239 U.S. 394, 410, held that a brickyard had no vested right to continuation after the City of Los Angeles determined that urban expansion necessitated a change of zoning.

> "A vested interest cannot be asserted against [the exercise of the police power] because of conditions once obtaining. [cite] To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress, and if in its march private interests are in the way they must yield to the good of the community. The logical result of petitioner's contention would seem to be that a city could not be formed or enlarged against the resistance of an occupant of the ground. . . ."

Although the particular facts in *Hadacheck* are dissimilar to the facts in this case, this holding has been iterated as a

general police power rule. See, e.g., *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 125-126 (1979); *Euclid v. Ambler Co.,* 272 U.S. 365, 387-390, 392 (1926); *Associated Home Builders Etc., Inc. v. City of Walnut Creek,* 4 Cal.3d 633, 638-640 (1971), *app. dism'd.*, 404 U.S. 878 (1971). The District Court's holding that the Overall Conditions related to a valid governmental purpose is amply supported by precedent.

The concomitant weighing of the burden on The Sea Ranch property owners also does not indicate any substantial deprivation of economic value to their property, as would be required by the *PruneYard* measure of a taking of private property. Appellants assert only that residential use of their property was delayed because The Sea Ranch Association and its membership chose not to comply with the Overall Conditions. Appellants have not proven any economic loss of property values at The Sea Ranch. Undeveloped parcels have been marketed throughout the period when the State and Regional Commissions were imposing the Overall Conditions on coastal permits. The Coastal Commission did not bar residential development of the subdivided lots. The permit holders, however, chose not to satisfy the permit conditions which had been imposed to effect a valid governmental purpose.

Even assuming that the landowners had proven that they had been deprived of *any* economic value, the relevant test is whether or not the regulation amounts to a taking of *virtually all* economic value. Mere diminution of value resulting from a change in land use regulation does not cause a taking of private property. See, e.g., *Hadacheck v. Sebastian supra,* 239 U.S. 394 (regulation upheld despite 90% diminution of land value).

In this case, the Overall Conditions did not preclude development of the individual lots or use of the beaches.

In fact, the State Commission expressly found in approving the Overall Conditions that residential development of all the lots was appropriate subject to the Overall Conditions. App. G, 72. The State Commission explained in detail its reasons for promulgating the Overall Conditions. App. G, 73-88. The findings also evidence the State Commission's conscious balancing of relative burdens on property owners and determination that the access requirements, for example, would not significantly affect economic value of the lots.

> "The required access has been planned so as to minimize conflicts of public use with private residences. Each of the beach accessways to be immediately offered either can be developed physically apart from existing houses and residential lots or would minimize conflicts by limiting the access near residential areas to pedestrians. In the case of the blufftop trail, it is required in a location which will conflict with no existing houses." App. G, 77.

The accessways were mapped so as to cross no individual lot owner's property. Platted on commons areas only, the State Commission minimized the effects public access could have on these parcels. Because these accessways are on commons areas where other The Sea Ranch property owners and guests are free to roam, the individual property owners could have no reasonable expectation of absolute privacy undisturbed by use of the accessways. Rather, somewhat greater use of these commons areas may be expected, but the isolated location of The Sea Ranch from major California population centers makes any projection of great numbers of visitors unlikely. But, in any event, appellants did not demonstrate to the District Court that their allegation of total loss of economic value had substance, and their allegation is not factually supportable.

Consequently, the State Commission's imposition of the Overall Conditions on permits issued for development at The Sea Ranch was a reasonable exercise of the police power.

C. Reasonable Exercise of the Police Power Is Not Transformed Into an Unconstitutional Taking of Private Property Because an Otherwise Valid Permit Condition Can Only Be Complied With by a Third Party.

Appellants assert that "[t]he constitutional requirement of just compensation is further violated by the fact that the use of individually owned homesites is being conditioned upon requirements which are beyond the power of any individual owner to fulfill. The easements required as the *quid pro quo* for allowing any lot owner to build are not located upon lands belonging to the individual lot owners." Jurisdictional Statement, 10. The District Court explicitly found against this contention and, in any event, the contention is legally unsound.

The District Court found that the contention "would invite this court to ignore the specific facts of this case; specifically that [the plaintiffs] are part of the Sea Ranch development, the Sea Ranch Association, and that they knowingly purchased their land subject to the covenants of the Sea Ranch Association. . . . Plaintiffs would have this court ignore the particular style of ownership the plaintiffs have voluntarily entered into. Plaintiffs knew, or should have known, at the time they purchased their lots that certain of their actions would be subject to Association approval or action. They cannot voluntarily restrict their land to a single use and bind themselves to the Sea Ranch Association and its covenants only to later assert a taking when the Coastal Commission attempts to deal with them in part through that entity. . . . The individual lot owners are

not powerless to affect compliance with the overall conditions . . . [I]f the lot owners seeking permits, instead of fighting the Commission, co-operate to have the Association carry out the conditions imposed by the Commission, those conditions can in fact be carried out. To follow plaintiffs' course and ignore the Sea Ranch development and the Sea Ranch Association as a whole would invite landowners in the future to engage in complicated forms of ownership to avoid government regulations. *We find it is not impossible for the plaintiffs to comply with the conditions imposed upon them.*" App. A, 11-13 (emphasis added).

Moreover, as indicated above, this Court has already reviewed and denied a petition for certiorari in a California land use case which specifically held that third party conditions are constitutionally valid. The California Court of Appeal held in *Frisco Land & Mining Co. v. State of California, supra,* 74 Cal.App.3d 753-754, that the Regional Commission could validly condition the issuance of a permit to allow construction of homes on lots which had already been subdivided when the Coastal Act went into effect on the provision of beach access. The beach access was to be sited on property not owned by the individual lot owners, who as appellants here, could not comply with the third party condition. No significant difference is evident between this appeal and *Frisco Land & Mining Co.* The holding of the court in *Frisco Land & Mining Co.* is precedent for this case.

The courts have also upheld third party conditions in other factual contexts. See, e.g., *U.S. v. Douglas County,* 5 ERC 1577 (D. Nev. 1973) (injunction barring issuance of building permtis in Tahoe area upheld even though individuals had no control over pollution of the Lake); *Morshead v. California Regional Water Quality Control*

Bd., 45 Cal.App.3d 442 (1975) (orders barring issuance of sewer connections until sewage discharge into San Francisco Bay was stopped were upheld against property owners' challenge that the order over which they had no control had constituted inverse condemnation of their property); *Swanson v. Marin Mun. Water Dist.*, 56 Cal.App.3d 512 (1976) (upheld denial of water connection to property owner because of purported water shortage even though he had no control over the supply of water); *Hollister Park Inv. Co. v. Goleta County Water District*, 82 Cal.App.3d 290 (1978) (upheld denial of water connection to property owner pending planning for additional water sources even though property owner had no means of controlling the water supply).

In each of these third party condition cases, the courts found the landowners' complaints that they had suffered a taking of their property without just compensation to be unavailing. The critical question before each court was whether the governmental agency had regulated the property pursuant to a valid governmental purpose. In each case, the courts found that the regulation was reasonably related to a valid governmental objective. Consequently, the courts held that the regulation did not constitute grounds for inverse condemnation.

Likewise, in this case, the relevant question is whether the Overall Conditions effect a valid governmental purpose. As shown above and by the District Court opinion (App. A), the Overall Conditions were adopted to effectuate clearly valid governmental purposes to provide access and to protect coastal resources. Since these conditions were effectuated by the State and Regional Commissions pursuant to the Coastal Act with the least possible interference with private property relative to their locations, the Over-

all Conditions are reasonably related to their purposes and clearly take into consideration private property concerns. As valid regulation, the Overall Conditions which are the subject of this case have not resulted in inverse condemnation.

CONCLUSION

The Court lacks jurisdiction over the appeal, and it should, therefore, be dismissed. Alternatively, in light of Cal. Public Resources Code section 30610.6 and subsequent events, the appeal should be dismissed without prejudice to later redocketing. If the Court reaches the merits of the appeal, the judgment must be affirmed. Appellants have failed to sustain their burden of showing an unreasonable, capricious or arbitrary exercise of the police power, or that such power was unreasonably, capriciously or arbitrarily applied to them.

Respectfully submitted,

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Appendix 1

CALIFORNIA COASTAL ACT OF 1976
CALIFORNIA PUBLIC RESOURCES CODE § 30610.6

§ 30610.6 Sea Ranch in Sonoma County

(a) The Legislature hereby finds and declares that it is in the public interest to provide by statute for the resolution of the lengthy and bitter dispute involving development of existing legal lots within the unincorporated area of Sonoma County, commonly known as the Sea Ranch. The reasons for the need to finally resolve this dispute include:

(1) Acknowledgment by the responsible regulatory agencies that development of existing lots at Sea Ranch can proceed consistent with the provisions of this division and other applicable laws provided certain conditions have been met. Development has been prevented at considerable costs to property owners because these conditions have not been met.

(2) That it has been, and continues to be, costly to Sea Ranch property owners and the public because of, among other reasons, extensive and protracted litigation, continuing administrative proceedings, and escalating construction costs.

(3) The need to provide additional public access to and along portions of the coast at the Sea Ranch in order to meet the requirements of this division. The continuation of this dispute prevents the public from enjoying the use of such access opportunities.

(4) The commission is unable to refund 118 "environmental deposits" to property owners because coastal development permit conditions have not been met.

(5) It appears likely that this lengthy dispute will continue unless the Legislature provides a solution,

and the failure to resolve the dispute will be unfair to property owners and the public.

(b) The Legislature further finds and declares that because of the unique circumstances of this situation, the provisions of this section constitute the most expeditious and equitable mechanism to ensure a timely solution that is in the best interest of property owners and that is consistent with the requirements of this division.

(c) If the Sea Ranch Association and Oceanic California, Inc. desire to take advantage of the terms of this section, they shall, not sooner than April 1, 1981, and not later than July 1, 1981, deposit into escrow deeds and other necessary documents that have been determined by the State Coastal Conservancy prior to their deposit in escrow to be legally sufficient to convey to the State Coastal Conservancy enforeceable and nonexclusive public use easements free and clear of liens and encumbrances for the easements specifically described in this subdivision. Upon deposit of five hundred thousand dollars ($500,000) into the same escrow account by the State Coastal Conservancy, but in no event later than 30 days after such deeds and other necessary documents have been deposited in the escrow account, the escrow agent shall transmit the five hundred thousand dollars ($500,000), less the escrow, title, and administrative costs of the State Coastal Conservancy, in an amount not to exceed twenty thousand dollars ($20,000), to the Sea Ranch Association and shall convey such deeds and other necessary documents to the State Coastal Conservancy. The conservancy shall subsequently convey such deeds and other necessary documents to an appropriate public agency that is authorized and agrees to accept such easements. The deeds

specified in this subdivision shall be for the following easements:

(1) In Unit 34A, a 30-foot wide vehicle and pedestrian access easement from a point on State Highway 1, 50 feet north of mile post marker 56.75, a day parking area for 10 vehicles, a 15-foot wide pedestrian accessway from the parking area continuing west to the bluff-top trail, and a 15-foot wide bluff-top pedestrian easement beginning at the southern boundary of Gualala Point County Park and continuing for approximately three miles in a southerly direction to the sandy beach at the northern end of Unit 28 just north of Walk-on Beach together with a 15-foot wide pedestrian easement to provide a connection to Walk-on Beach to the south.

(2) In Unit 24, a day parking area west of State Highway 1, just south of Whalebone Reach, for six vehicles, and a 15-foot wide pedestrian accessway over Sea Ranch Association common areas crossing Pacific Reach and continuing westerly to the southern portion of Shell Beach with a 15-foot wide pedestrian easement to connect with the northern portion of Shell Beach.

(3) In Unit 36, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 53.96, a day parking area for 10 vehicles, and a 15-foot wide pedestrian accessway from the parking area to the beach at the intersection of Units 21 and 36.

(4) In Unit 17, adjacent to the intersection of Navigator's Reach and State Highway 1, 75 feet north of mile post marker 52.21, enough land to provide day parking for four vehicles and a 15-foot wide pedestrian accessway from the parking area to Pebble Beach.

(5) In Unit 8, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 50.85, a day parking area for 10 vehicles and a 15-foot wide pedestrian accessway from the parking area to Black Point Beach.

(6) With respect to each of the beaches to which access will be provided by the easements specified in this subdivision, an easement for public use of the area between the line of mean high tide and either the toe of the adjacent bluff or the first line of vegetation, whichever is nearer to the water.

(7) Scenic view easements for those areas specified by the executive director, as provided in subdivision (d), and which easements allow for the removal of trees in order to restore and preserve scenic views from State Highway 1.

(d) The executive director of the commission shall, within 30 days after the effective date of this section, specifically identify the areas along State Highway 1 for which the scenic view easements provided for in paragraph (7) of subdivision (c) will be required. In identifying the areas for which easements for the restoration and preservation of public scenic views will be required, the executive director shall take into account the effect of tree removal so as to avoid causing erosion problems. It is the intent of the Legislature that only those areas be identified where scenic views to or along the cost are unique or particularly beautiful or spectacular and which thereby take on public importance. The restoration and preservation of the scenic view areas specified pursuant to this subdivision shall be at public expense.

(e) Within 30 days after the effective date of this section, the executive director of the commission shall specify design

criteria for the height, site, and bulk of any development visible from the scenic view areas provided for in subdivision (d). Such criteria shall be enforced by the County of Sonoma if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy. Such criteria shall be reasonable so as to enable affected property owners to build single-family residences of substantially similar overall size to those which property owners who are not affected by these criteria may build or have already built under the Sea Ranch Association's building design criteria. The purpose of such criteria is to ensure that development will not substantially detract from the specified scenic view areas.

(f) On and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, no additional public access requirements shall be imposed at the Sea Ranch pursuant to this division by any regional commission, the commission, any other state agency, or any local government. The Legislature hereby finds and declares that the provision of the access facilities specified in this subdivision shall be deemed adequate to meet the requirements of this division.

(g) The realignment of internal roads within the Sea Ranch shall not be required by any state or local agency acting pursuant to the provisions of this division; provided, however, that appropriate easements may be required by the County of Sonoma to provide for the expansion of State Highway 1 for the development of turnout and left-turn lanes and for the location of a bicycle path, when the funds are made available for such purposes. The Legislature finds and declares that the provisions of this subdivision are adequate to meet the requirements of this division to ensure

that new development at the Sea Ranch will not overburden the capacity of State Highway 1 to the detriment of recreational users.

(h) No coastal development permit shall be required pursuant to this division for the development of supplemental water supply facilities determined by the State Water Resources Control Board to be necessary to meet the needs of legally permitted development within the Sea Ranch. The commission, through its executive director, shall participate in the proceedings before the State Water Resources Control Board relating to such facilities and may recommend terms and conditions that the commission deems necessary to protect against adverse impacts on coastal zone resources. The State Water Resources Control Board shall condition any permit or other authorization for the development of such facilities so as to carry out the commission's recommendation, unless the State Water Resources Control Board determines that any such recommended terms or conditions are unreasonable. This subdivision shall become operative if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(i) Within 90 days after the effective date of this section, the commission, through its executive director, shall specify criteria for septic tank construction, operation, and monitoring within the Sea Ranch to ensure protection of coastal zone resources consistent with the policies of this division. The North Coast Regional Water Quality Control Board shall review such criteria and adopt it, unless it finds such criteria or a portion thereof is unreasonable. The regional board shall be responsible for the enforcement of any such adopted criteria if the deeds and other necessary documents

specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(j) Within 60 days after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, the commission shall refund every Sea Ranch "environmental deposit" together with any interest earned on such deposit to the person, or his or her designee, who paid such deposit.

(k) Notwithstanding any other provision of law, on and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, a coastal development permit shall not be required pursuant to this division for the construction of any single-family residence dwelling on any vacant, legal lot existing at the Sea Ranch on the effective date of this section. With respect to any other development for which a coastal development permit is required within legally existing lots at the Sea Ranch, no conditions may be imposed pursuant to this division that impose additional public access requirements or that relate to supplemental water supply facilities, septic tank systems, or internal road realignment.

(l) Notwithstanding any other provision of law, if on July 1, 1981, deeds and other necessary documents that are legally sufficient to convey the easements specified in subdivision (c) have not been deposited in an escrow account, the provisions of this section shall no longer be operative and shall have no force or effect and thereafter all the provisions of this division in effect prior to enactment of this section shall again be applicable to any development within the Sea Ranch.

(m) The Legislature hereby finds and declares that the provisions for the settlement of this dispute, especially with respect to public access, as set forth in this section provide an alternative to and are equivalent to the provisions set forth in Section 30610.3. The Legislature further finds that the provisions of this section are not in lieu of the permit and planning requirements of this division but rather provide for an alternative mechanism to Section 30610.3 for the resolution of outstanding issues at the Sea Ranch.

Motion to Dismiss or Affirm 2

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No. 81-335

In the Supreme Court

OF THE

United States

OCTOBER TERM 1981

THE SEA RANCH ASSOCIATION,
a California nonprofit corporation, et al.,
Appellants,

VS.

CALIFORNIA COASTAL COMMISSION, et al.,
Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND SIERRA CLUB,
Appellees.

On Appeal from the United States District Court for the Northern District of California

MOTION TO DISMISS OR SUMMARILY AFFIRM

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No. 81-335

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OCTOBER TERM 1981

THE SEA RANCH ASSOCIATION,
a California nonprofit corporation, et al.,
Appellants,

VS.

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Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND SIERRA CLUB,
Appellees.

On Appeal from the United States District Court for the Northern District of California

MOTION TO DISMISS OR SUMMARILY AFFIRM

OBJECT OF THE MOTION

The Natural Resources Defense Council (NRDC) and the Sierra Club (hereinafter "environmental appellees") seek summary disposition of this appeal pursuant to Rule 16 of the Rules of the Supreme Court of the United States. Further briefing or argument would be pointless in that (1) jurisdiction of this appeal does not properly lie with this Court (2) the case is nonjudiciable and (3) the appeal presents no substantial federal questions.

STATEMENT OF THE CASE

The Sea Ranch Association[1] and individual landowners in the Sea Ranch development appeal from the decision of the three-judge court below, holding that the California Coastal Act of 1976 (Coastal Act) is constitutional as applied. Rather than reiterate here, environmental appellees subscribe to the statement of the case presented in the California Coastal Commission's Motion to Dismiss or Affirm. However, recent developments of particular significance to the arguments raised in this Motion warrant a brief recitation.

In 1980, subsequent to the briefing and argument of this case below, the legislature of the State of California enacted a law (the Bane Bill) which effects a complete accord and satisfaction of the dispute concerning permits and easements at Sea Ranch. Cal. Pub. Res. Code § 30610.6 (Appx. A). This law, which became effective on October 1, 1980, appropriated $500,000 for the purchase of specified easements[2] and relieved the owners of vacant, legal lots existing at Sea Ranch on October 1, 1980, from the obligation under the California Coastal Act to obtain a permit for the construction of single-family homes. Cal.

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[1]The Sea Ranch Association is a nonprofit, membership organization composed of the owners of all of the lots at Sea Ranch. The Association has an elected, seven-member board of directors, which has the authority to take action on behalf of the entire association.

[2]Five vertical access trail easements, one three mile lateral bluff top trail easement, easements for the use of five beach areas between the line of high mean tide and either the toe of the adjacent bluff or the first line of vegetation, whichever is nearer the water, and an unspecified number of view easements to be determined by the executive director of the California Coastal Commission.

Pub. Res. Code §§ 30610.6(c), 30610.6(k). Environmental appellees are advised by the staff of the California Coastal Commission that the Sea Ranch Association has accepted the terms of the Bane Bill, that reciprocal tenders of performance have been completed, that the Commission is no longer requiring coastal development permits for the construction of single family residences at Sea Ranch, and that approximately 20 houses are currently under construction at Sea Ranch at this time.

On June 12, 1981, a suit was filed against the California Coastal Commission and the State Coastal Conservancy[3] challenging the constitutionality of the Bane Bill under state law.[4] The Complaint seeks a declaratory judgment alleging *inter alia* that the Bane Bill is an unlawful gift of public funds and violates the constitutional mandate for coastal access.

ARGUMENT

I

THE JURISDICTION OF THIS COURT HAS BEEN IMPROPERLY INVOKED

Environmental appellees adopt the argument of the California Coastal Commission on this point, and incorporate it here by reference.

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[3]The Sea Ranch Association and Oceanic, California, Inc., the developer of Sea Ranch, were named as real parties in interest.

[4]*C.O.A.A.S.T. etc., et al. v. State Coastal Conservancy, et al.*, No. 781470 (Cal. Super. Ct., filed June 12, 1981).

II

THE STATE ACTION COMPLAINED OF HAS BEEN OR WILL BE SUPERSEDED, COMPELLING JUDICIAL ABSTINENCE

The appellants asserted below that the Coastal Act was unconstitutional as applied in that it took their property without just compensation. Juris. Stmt. at 2. This issue no longer exists between the parties to this appeal because the aspect of the Coastal Act to which appellants objected below has been eliminated by an amendment known as the Bane Bill. Cal. Pub. Res. Code § 30610.6(c). The appellant Sea Ranch Association has accepted the terms of the legislative settlement and the individual lot owners are now free from the restraint on the use of their land of which they complained below.

The Supreme Court should dispose of this case on the basis of the law as it is now, rather than as it was in the court below. *Kremens v. Bartley*, 431 U.S. 119, 129 (1977). When, as here, a new statute is enacted or becomes operative during the pendency of an appeal and that statute eliminates the questions which are the bases of the attack on the prior statute, then the appeal is moot. *Allee v. Medrano*, 416 U.S. 802, 818 (1974); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412, 414-415 (1972).[5]

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[5] In the present case the mootness claim is not mitigated by the possibility of a continuing harm to the appellants, *Powell v. McCormack*, 395 U.S. 486 (1969), or a future recurrence of the asserted past injury. *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953). There is no lingering harm to the plaintiff from the Coastal Act. The permit requirement having been eliminated, construction can commence on Sea Ranch lots subject only to the zoning and land use requirements applied to all construction by Sonoma County.

The pendency of the state court challenge to the Bane Bill does not warrant the exercise of jurisdiction by this Court. The Bane Bill is in effect. No injunction has been issued and the law is being implemented. The terms of the Bane Bill have been accepted by the Sea Ranch Association as a complete accord and satisfaction of the instant controversy and performance has been tendered by all sides. Having accepted this settlement voluntarily and with the advice of competent counsel, appellants should not be allowed to press this appeal as a hedge against the bare possibility that the settlement may be legally infirm for reasons having nothing to do with this appeal. Any judgment of what should occur if the settlement were illegal would be purely advisory. This appeal therefore should be dismissed as moot or, at a minimum, the Court should abstain pending the outcome of that suit.

Should the constitutional challenge fail, the settlement effected by the Bane Bill will stand and, pursuant to agreement among the parties to this appeal, the appeal will be voluntarily dismissed by appellants under Rule 53 of the Supreme Court. If the state lawsuit succeeds, the California Coastal Commission's jurisdiction over Sea Ranch will nonetheless be superseded in due course.

The Commission has primary jurisdiction over the issuance of permits only temporarily. Under the Coastal Act, this authority will shift to Sonoma County, the site of the Sea Ranch, when the County completes a local coastal plan

applicable to Sea Ranch, and the plan is certified by the Coastal Commission.[6] Cal. Pub. Res. Code § 30519. Admittedly, in reviewing and approving a Sonoma County plan for Sea Ranch, the Coastal Commission would be bound by its policies respecting public access and views. But there is no basis to conclude that Sonoma County conditions substantially different and less onerous than the interim ones formerly imposed by the Commission would not be approved.

Judicial deference to temporary land use measures is well established and temporary measures more severe than those at issue here have been upheld. See, *Steel Hill Development v. Town of Sanbornton*, 469 F.2d 956 (1st Cir. 1972); see also Freilich, *Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning*, 49 J. Urban L. 65 (1971). Indeed, a temporary moratorium on development within the coastal zone under the predecessor to the Coastal Act was held not to be a taking in *Frisco Land and Mining Co. v. State of California*, 74 Cal. App. 3d 736, 141 Cal. Rptr. 820 (1977).

The great deference which is customarily accorded to regulations which are interim in nature is an additional reason for this Court to abstain from entertaining this appeal.

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[6]A Sonoma County plan was approved, in part, in December 1980. However, the Commission rejected that portion of the plan which applied to Sea Ranch, finding insufficient the provisions with respect to coastal access. The revision and resubmission of the plan for certification has been suspended because of the Bane Bill, which both Sonoma County and the Coastal Commission regard as superseding the Coastal Act with respect to Sea Ranch.

III

NO SUBSTANTIAL QUESTIONS ARE PRESENTED BY THIS APPEAL

The appellants invite the Court to view the state-imposed conditions on development of their land—requiring that public access be secured and coastal views restored—as actions which transform private beaches into public recreation areas (Juris. Stmt. at 18). But appellants' characterization does little justice to the nature, purpose or effect of the state action and the comparative rights and interests of the appellants and the state.

In the State of California, the coastal tidelands[7] and the adjoining navigable sea are held by the state in trust for the people of California.[8] Private property abutting the tidelands is subject to a constitutional guarantee of public access.[9] With a large and growing population, the vast majority of whom live within an hour's drive of the sea, California coastline has come under immense pressure both from public recreation and private development. The State's mechanism for balancing and accommodating these competing interests is embodied in the planning and regulatory processes of the California Coastal Act.

The Sea Ranch development furnishes a graphic example of these tensions. It occupies a ten mile stretch of coastline abutting the public tidelands. Were it not for the conditions imposed by the Coastal Commission respecting

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[7]The strip of beach between the mean high and mean low tide.
[8]*People v. California Fish Co.*, 166 Cal. 576, 138 P. 79 (1913).
[9]Cal. Const., art. X, § 4.

public access and unobstructed views, the public would be effectively walled-off from any use or enjoyment of this public resource throughout this stretch.

If such an exercise of police power were not available to the Commission, private owners throughout the full expanse of California's coastline from Oregon to Mexico would be enabled to effectively "take" the public tidelands for their own exclusive use, by preventing access thereto by the public to whom they belong. These tidelands the state holds in trust for the benefit of all of the people, not just those who by fortune acquire littoral parcels. In default of state action to secure public access in exchange for permitting the development of these coastal tracts, vast stretches of this public resource would be effectively turned over to private use and control, except at those few and intermittent points where the state owns or can acquire rights of way from public roadways.

Viewed from this broader perspective, the state action here is not a taking of private land for public purposes, but a necessary and indispensable measure to prevent the *de facto* private appropriation by littoral landowners of a vast public resource of unparalleled aesthetic, commercial and recreational significance. As recognized in *Penn Central v. New York City*, 438 U.S. 104, 129 (1978), numerous cases have held "that States and cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city." See e.g., *City of New Orleans v. Dukes*, 427 U.S. 297 (1976), *Young v. American Mini Theatres Inc.*, 427 U.S. 50 (1976); *Village of Belle Terre v. Boraas*, 416 U.S. 1,

9-10 (1974) and *Berman v. Parker*, 348 U.S. 26, 33 (1954). In the present case the zoning goal of providing public views of and access to the coast, like that of historic conservation in *Penn Central* "is but one aspect of the much larger problem, basically an environmental one, of enhancing or perhaps developing for the first time the quality of life for people." 438 U.S. at 108. The regulatory policies and mechanisms of the California Coastal Act are found in numerous federal and state statutes.[10] See, e.g., La. Rev. Stat. Ann. § 49:213.2 (West Supp. 1980); N.C. Gen. Stat. § 113A-102 (1978); Or. Rev. Stat. § 390.610 (1979); Tex. Civ. Code Ann. tit. 86 art. 5415d (Vernon 1970). The action of the state in this case is well within the recognized bounds of constitutional exercises of police power, and is, in fact, the only method reasonably available for executing the public trust in which it holds the tidelands. No substantial issues are presented by this appeal.

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[10]The Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1461 (1976) exemplifies the public concern for adequate land use planning in the coastal areas. The Act states: "The Congress finds and declares that it is the National policy . . . to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and aesthetic values. . . ." *Id.* § 1452. The 1980 amendments to this Act add that it is the national policy to provide public access to the coasts for recreation purposes. Id. § 1452(2)(D). Judicial invalidation of California's attempt to comply with this federal directive would have national consequences in that it would also prevent other states from complying.

A. The conditions imposed by the Commission are a proper exercise of the police power.

Land-use regulations, if reasonable, are upheld as a proper exercise of zoning authority and state or agency actions are presumed to be reasonable. *Goldblatt v. Hempstead,* 369 U.S. 590 (1962). California, by the permit requirement at issue, sought to promote the right of the public to have visual and physical access to the tidelands, a legitimate public welfare interest which is enshrined in the Constitution of California. Article X, Section 4 provides:

> No individuals claiming or possessing the frontage or tidal lands of a navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose . . . and *the legislature shall enact such laws as will give the most liberal construction to this provision so that access to the navigable waters shall always be obtainable for the people thereof.* (Emphasis added).

California courts have consistently implied from this provision a reservation by the state of a public trust interest in the tidelands for the benefit of its people.[11]

This constitutional safeguard of the public's tideland resource embodies the imperative that the state take such reasonable measures as it deems necessary or desirable to assure that the public access rights are not defeated by the private owners of lands which separate the tidelands from the public highways. This the state did in enacting the

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[11]*Marks v. Whitney,* 6 Cal. 3d 251; 491 P.2d 374, (1971); *People v. California Fish Co., supra* note 8.

California Coastal Act of 1976.[12] Cal. Pub. Res. Code § 30000 *et seq.* The legislature therein declared that the "coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people." Cal. Pub. Res. Code § 30001(a).

A basic goal of the Coastal Act is to protect and enhance the environment of the coastal zone. Cal. Pub. Res. Code § 30001.5. Explicit in the Act are policies guaranteeing public access and views from Highway One. New development projects must provide public access along the coast and from the nearest public road to the shore. Cal. Pub. Res. Code § 30212; See also Cal. Pub. Res. Code § 30211. The Act further provides that development permitted in the coastal area must be sited and designed to protect views of the ocean and along the coast. Cal. Pub. Res. Code § 30251.[13]

The conditions on development to which the appellants object were derived from these policies. These conditions are designed to allow further development at the Sea Ranch under conditions which mitigate the adverse environmental impact of that development. Far from appropriating appellant's property or prohibiting its development, the

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[12]Replacing the California Coastal Zone Conservation Act of 1972 (former Cal. Pub. Res. Code § 27000 *et seq.*), an initiative measure which expired by its own terms on January 1, 1977.

[13]The California Coastal Commission is given responsibility by the Act for issuing permits for all development within the coastal zone. Cal. Pub. Res. Code § 30601. Before issuing a permit, the Commission may impose reasonable terms and conditions on the proposed development and must find that it is in accord with the access and view policies of the Coastal Act. Cal. Pub. Res. Code §§ 30604, 30607.

Commission's imposition of conditions contemplates that all lots in individual ownership will in fact be developed for the precise purpose for which they were purchased—the construction of residences thereon. (Commission Findings, Juris. Stmt. Appx. at G-72). Nor are these conditions unusual or unprecedented. The Commission has, as a prerequisite to development in a number of subdivisions along the coast, imposed similar conditions.

As the Court below recognized, the regulatory tool of requiring dedications for public purposes in exchange for permission to develop private property falls well within the category of state actions which has uniformly been upheld against constitutional challenge. (Juris Stmt., Appx. A-6, A-7). This Court had an opportunity to review one such decision from the California Supreme Court, and dismissed the appeal for want of a substantial federal question.[14] There, as here, the condition which the state placed on the development of private land involved a dedication of land for recreational use by the public.[15] The instant case

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[14] *Associated Home Builders, etc., Inc. v. City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606, *appeal dismissed*, 404 U.S. 878 (1971).

[15] In upholding the dedication requirements, the Court stressed the need, in light of the disappearance of open land, for recreational facilities. 4 Cal. 3d 633, 640. The dedicated land was to be used for a public park. In *Ayres v. City of Los Angeles*, 34 Cal. 2d 31, 207 P.2d 1 (1949), the Court upheld conditions requiring the developer to dedicate certain strips of land for the purpose of widening public highways and streets and planting trees and shrubbery. In rejecting the contention that the city had engaged in an illegal taking, the Court noted that "[i]t is the petitioner who is seeking to acquire the advantages of lot subdivision and upon him rests the duty of compliance with reasonable conditions for design, dedication, improvement and restrictive use of the land. . . ." 34 Cal. 2d at 42.

provides no larger constitutional question than did the *Associated Home Builders* case.

The state action in this case does not meet the test for a taking recently articulated by this Court in *Agins v. City of Tiburon,* 447 U.S. 255, 260 (1980). "The application of a general zoning law to a particular property effects a taking if the ordinance does not substantially advance legitimate state interests * * * or denies an owner economically viable use of his land." (Juris. Stmt. at 10). The conditions which the Coastal Commission placed on development fit neither of these descriptions of a taking. California has a substantial interest in the protection of the coastal zone. The owners of land at Sea Ranch are not prevented from building single-family homes.

B. The decision below is consistent with Kaiser Aetna v. United States, 444 U.S. 164 (1979) and Leo Sheep v. United States, 440 U.S. 668 (1979).

1) Appellants rely heavily upon *Kaiser Aetna* for the proposition that the right to exclude the public is a fundamental element of private property and that state action which requires physical access by the public is necessarily a compensable taking. In *Kaiser, supra,* owners of a private pond invested substantial sums of money to convert it into a navigable marina and to connect it with an ocean bay. At issue was whether the owners could deny the public access to the pond, which as a result of their improvements arguably had become subject to a navigational servitude. This Court held that access to the public could not be required without compensation.

This case is wholly different. But for the action of the private owners in *Kaiser*, no public interest in the pond would have been created. But here, the public interest—access to the public tidelands—was created not by appellant's efforts, but by the state constitution and the Coastal Act. In *Kaiser* this Court stressed the fact that under *state* law Kuapa Pond had always been private property. *Kaiser, supra* at 179. This emphasis on state law in characterizing the private property right was developed more explicitly in *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), where the court held that the starting point for determining the quantum of constitutionally protected rights which a private landowner possesses is the state law which creates and governs those rights. Moreover, only the states, not the federal government, possess the authority to define "property" in the first instance. *Id.* at 84. In the instant case, the state law creates rather than defeats a public right as against the private landowners.

Additionally, in *Kaiser*, imposition of the navigational servitude on the private marina would have given the public unlimited access to all portions of it, effectively transforming that marina into a public waterway. The public intrusion here, by contrast, would be extremely limited.[16] As the Court made clear in *PruneYard*, the fact that a physical invasion of property has occurred is not deter-

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[16]The conditions require the dedication of only five vertical access easements from Highway One to the beach and five lateral access easements extending from the line of mean high tide to either the toe of the bluff or the first line of vegetation, whichever is nearer the water, and a pedestrian easement on a bluff top trail. Juris. Stmt., Appx. at G-53 to 57.

minative of a taking where the landowner fails "to demonstrate that the 'right to exclude others' is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a 'taking'." 447 U.S. at 84.

Moreover, the dedication of easements actually effects an equitable exchange with the private property owners, not unlike the "average reciprocity of advantage" which this Court has found to justify zoning measures generally. *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 415 (1922). In exchange for the right to develop, and effectively exclude the public from some of the tideland areas, the private landowners are required to dedicate some of their property for public use.

The factors which the Court considered in *Kaiser*—the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action, 444 U.S. at 175, call for a very different outcome in the instant case. Little or no economic impact is involved in the required dedications. Indeed, none has been alleged or demonstrated. The dedications do not preclude the lot owners from developing their individual property or using the beaches. They simply allow public use of *some* of the beaches. Especially in view of the constitutional guarantee of public access to the sea, there could have been no reasonable expectation that the state would permit a ten mile stretch of its coastal zone, a public resource, to be indefinitely cut off from public access. Whenever the lot owners here purchased their property, they, like any other property owners, could have had

no reasonable expectation that the state would not later restrict the use of their land to protect important welfare interests. Indeed, *Kaiser* sanctions the very type of state action involved in this case. The Court stated that it had no doubt "that the government could have refused to allow [the dredging of the pond] on the ground that it would have impaired navigation on the bay, or could have conditioned its approval of the dredging on petitioner's agreement to comply with various measures that it deemed appropriate for the promotion of navigation." *Kaiser, supra* at 179. Here, the agreement to provide access to public lands is just such a precondition for approval of development on private property.

2) Appellants rely on *Leo Sheep Co. v. United States,* 440 U.S. 668 (1979), to establish the principle that the government must pay just compensation to acquire easements or to transform private land into a public park. They maintain that such a principle applies regardless of the public goals served by the acquisition. (Juris. Stmt. at 17).

Leo Sheep, however, deals with the narrow problem of whether easements should be implied in government grants which already contain certain express reservations. *Leo Sheep, supra* at 678. In contrast, the present case involves neither government land grants nor a claim that the doctrine of implied easements is applicable.

The Court in *Leo Sheep* was "unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation." 440 U.S. 668, 687-688. Investment backed expectations, however, were not unreasonably upset here. Any expectations

of exclusive use of the land were unrealistic given California's constitutional and statutory policy of providing access to the tidal area.[17]

C. There is no warrant to appellants' claim that the conditions imposed on development are unconstitutional because they are unrelated to the proposed use of the land.

Appellants assert that this case presents a substantial question because there is no direct nexus between their proposed use of the property and the public access and view conditions imposed by the Coastal Commission. (Juris. Stmt. at 10). Appellants also claim that their "investment-backed expectations" of building homes on

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[17]Curiously, Appellants assert that their reasonable expectations that the public could be excluded from the Sea Ranch are unaffected by Article X, Section 4 of the California Constitution because the Sea Ranch lands were under private ownership before California became a state in 1850 and before the predecessor of Article X, Section 4, former Article XV, Section 2, was adopted in 1879. (Juris. Stmt. at 21 n. 16). This novel contention is unsupported by facts in the record below, and is inappropriately raised by appellants at this time. Moreover, even if it were conceded that the tidal area was included in the 1846 land grant to the Sea Ranch Association's predecessor in interest, and never became part of the public trust, it still would not affect the applicability of the Article X, Section 4 policy of promoting public access to the navigable waters of the state. Use of the navigable waters necessarily involves access to, and across, the tidelands. The Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*, granted the three mile strip of all coastal land from the mean high tide line seaward from the Federal Government to the states. Appellants' assertion that their expectation interests are unaffected by the California Constitution cannot withstand scrutiny.

their lots have been defeated by the conditions imposed in this case. They do not claim that Sonoma County changed its zoning restrictions to their detriment, but rather that the Coastal Commission placed additional conditions on development after some lots had been purchased.[18]

These arguments fail to raise substantial issues for three reasons: a nexus between the conditions and the proposed use does indeed exist, as found by the Court below; no such nexus is constitutionally required; and appellants could not have had a reasonable expectation that the state government would forebear from securing for the public that access to its coastline which is guaranteed in the California Constitution.

The need for the scenic and access easements is directly related to the development of Sea Ranch. The need for a tree trimming program developed only because the trees

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[18]It is true, as appellants claim, that the Sea Ranch developer donated 120 acres at the northern end of the Sea Ranch, for a public park (now known as Gualala Point Regional Park), Juris. Stmt. at 14-15, but appellants further assertion that this land was accepted in lieu of the dedication of access routes required by the Coastal Commission is incorrect. Appellants state at paragraph 31 of their amended and supplemented Complaint in this action that the county merely acknowledged that the park was "offered" in lieu of certain access corridors. No such promise was ever made by the county, at least upon the public record, and could not in any event have bound the Commission. Moreover, this contention was specifically considered and rejected by the Court of Appeal for the State of California in *Oceanic California v. The North Central Coast Regional Commission*, 63 Cal. App. 3d 57, 80, 133 Cal. Rptr. 664 (1976). Any reliance on this view of the transaction was not a reasonable expectation but a gratuitous hope.

were planted by the appellants to create a private enclave at Sea Ranch. The trimming program thus is integrally related to the development of the property. This relationship also applies to the access requirement. As found by the Court below, "the gradual build-out at Sea Ranch, and like developments in the region, with the likely attendant increase in local population and tourism, will increase the existing need for public access." (See Juris. Stmt. Appx. at A-10).

Even if this finding had not been made, a tangible nexus clearly exists in that the state's conditions exact no more than a fair reciprocity to the public for the exclusive use by Sea Ranch residents of the portion of the public tidelands which are not reasonably accessible from the public access points.

While appellants criticize the District Court for not citing authority for the proposition that permit conditions need not have a direct nexus to the proposed development,[19] appellants themselves fail to cite any authority supporting their illusory nexus requirement. Appellants mistakenly argue that the prohibition of residential construction, except upon conditions without a direct nexus to the proposed use, violates the fundamental principle that "[t]he application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests *** or denies an owner

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[19]Juris. Stmt. at 15.

economically viable use of his land", citing *Agins v. City of Tiburon* 447 U.S. 255, 260 (1980) (Juris. Stmt. at 10). The *Agins* case, however, cannot support appellants' contentions. It makes no mention of a nexus requirement in its treatment of either component of this test. On the contrary, many cases hold that it is a legitimate exercise of the police power for a state, as a prerequisite to development, to impose conditions or compel dedications which primarily benefit the public at large.[20]

A littoral landowner cannot legitimately complain that his investment-backed expectations have been defeated when the state exercises its police power to secure minimal access points to implement the California Constitution's protection of the public tidelands. The California Constitution[21] and the state statutory scheme[22] expressly limit the bundle of rights of littoral landowners by requiring that such owners must provide public access and view easements to the coast. Appellants' claim that the California Coastal Commission's regulations substantially interfere with their investment backed expectations seems manufactured.

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[20]*Associated Home Builders, etc., Inc. v. City of Walnut Creek, supra; Ayres v. City of Los Angeles, supra.* The California Supreme Court has upheld exaction mechanisms which required that something be done to certain property in return for the right to develop other parcels of land. See note 15, *supra.*

[21]Cal. Const. art. X, § 4.

[22]Cal. Pub. Res. Code § 30000 *et seq.*

D. No substantial question is presented by the Coastal Commission's imposition of conditions which cannot be satisfied by the individual property owner alone.

Appellants argue that the Coast Commission's exactions are of special constitutional significance because the individual property owners are powerless to grant the easements which are a prerequisite to their obtaining building permits from the Commission. This argument has evaporated with the enactment of the Bane Bill and the acceptance of its terms by appellants. Quite simply, no such permits are now required. Cal. Pub. Res. Code § 30610.6(k).

Even if this were not the case, however, appellants' argument is without merit. Appellants' grievance stems primarily from the fact that the access and tree trimming requirements had been applied to common land, owned collectively by all Sea Ranch lot owners. To meet the Coastal Commission's conditions prior to the Bane Bill, therefore, agreement by a majority of lot owners at the Sea Ranch would have been required. The Court below specifically found that the individual lot owners were not powerless to comply with the overall conditions.[23] It is within their ability, anytime they wish, to control the actions of the Association. Even if that were not the case,

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[23]"Significantly, it appears that the number of lot owners who have not yet built or received building permits substantially outnumbers the lot owners who have built. Thus, if the lot owners seeking permits . . . co-operate to have the Association carry out the conditions imposed by the Commission, those conditions can in fact be carried out. To follow plaintiffs' course and ignore the Sea Ranch development and the Sea Ranch Association as a whole would invite landowners in the future to engage in complicated forms of ownership to avoid governmental regulations." (Juris. Stmt. Appx. at A-12 to A-13).

these individuals knowingly and voluntarily bought into not only their separate lots but a communal mode of ownership of the common areas. A result which permits them to now interpose this ownership mode to defeat the legitimate exercise of state powers would invite others to resort to subterfuge rather than to reasonable accommodations of public rights and interests.

The problem which appellants seek to have this Court remedy is not a taking of property by the Commission inherent in its regulations, but the apparent unwillingness of the members of the Sea Ranch Association to perform the conditions. It is not the Commission but the property owners themselves who were responsible for the restraint on development. This result is contrary to the Commission's intent, and is not in any respect inherent in the form of regulation utilized by the Commission.[24] It arises only because of the contingencies of the internal decision-making process within the Sea Ranch property owners' association, a matter which appellants are free to remedy with or without judicial intervention under private contract principles. The constitutionality of regulation cannot be made to hinge on such vagaries.

Finally, even if appellants were powerless as individuals, regulations have been upheld which impose conditions on the development of individual property, even though those

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[24]The purpose of the regulations was not to prohibit development at the Sea Ranch, but to limit the environmental damage that it causes. The Commission anticipated that all individually owned lots eventually would have homes built on them, as their owners intended when purchasing them.

conditions required action by third parties beyond the individuals' exclusive control. *Hollister Park Inv. Co. v. Goleta County Water District*, 82 Cal. App. 3d 290, 147 Cal. Rptr. 91 (1978); *Swanson v. Marin Mun. Water District*, 56 Cal. App. 3d 512, 128 Cal. Rptr. 485 (1976); *Morshead v. California Regional Water Quality Control Board*, 45 Cal. App. 3d 442, 119 Cal. Rptr. 586 (1975). This area of the law is well settled. Even if appellants' contentions on this point were not now moot, further briefing or argument on this question would be pointless.

CONCLUSION

For the reasons stated above, this appeal should be dismissed for want of a substantial question, or, in the alternative, summarily affirmed under settled principles of law without further briefing or argument.

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Appendix A

Assembly Bill No. 2706

CHAPTER 1371

An act to add Section 30610.6 to the Public Resources Code, relating to the California Coastal Act, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature.
Filed with Secretary of State October 1, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2706, Bane. Coastal zone: development permits; public access.

The California Coastal Act of 1976, generally, requires any person who is to perform or undertake any development within the coastal zone, as defined, to obtain a coastal development permit authorizing such a development which must be in conformity with designated coastal resources planning and management policies provisions. Such policies require, with prescribed exceptions, that designated public access be provided in new development projects. The act requires a coastal development permit or any development or action on apepal to be subject to reasonable terms and conditions to ensure that such development or action will be in accordance with the act.

This bill would provide for the conveyance of specified easements in the unincorporated area of Sonoma County, commonly known as the Sea Ranch to the State Coastal Conservancy under prescribed terms and conditions. It would

exempt from the permit requirements of the act the construction of any single-family residence dwelling within such an area on any vacant, legal lot existing on the effective date of the provisions of this bill. As to any other development, within such an area, for which a permit is required under the act, this bill would provide that no conditions may be imposed pursuant to the act that impose additional public access requirements or that relate to supplemental water supply facilities, septic tank systems, or internal road realignment. It would provide that, if on July 1, 1981, deeds and other necessary documents that are legally sufficient to convey the specified easements have not been deposited in an escrow account, such provisions of the bill shall no longer be operative and have no force or effect.

The bill would reappropriate a specified $500,000 appropriation for Salt Point State Park—land acquisition to the State Coastal Conservancy for purposes of carrying out the provisions of this bill. It would provide that such appropriation shall be available for encumbrance until July 1, 1981, and, if by that date the deeds and other necessary documents that are legally sufficient to convey the specified easements have not been deposited in escrow, as prescribed, such appropriated money shall revert to the Energy and Resources Fund.

The bill would provide that local governments would be reimbursed pursuant to designated provisions of the California Coastal Act of 1976 for costs that may be incurred by them in carrying out any program or performing any service required by the bill.

The bill would take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact has follows:

SECTION 1. Section 30610.6 is added to the Public Resources Code, to read:

30610.6 (a) The Legislature hereby finds and declares that it is in the public interest to provide by statute for the resolution of the lengthy and bitter dispute involving developing of existing legal lots within the unincorporated area of Sonoma County, commonly known as the Sea Ranch. The reasons for the need to finally resolve this dispute include:

(1) Acknowledgment by the responsible regulatory agencies that development of existing lots at Sea Ranch can proceed consistent with the provisions of this division and other applicable laws provided certain conditions have been met. Development has been prevented at considerable costs to property owners because these conditions have not been met.

(2) That it has been, and continues to be, costly to Sea Ranch property owners and the public because of, among other reasons, extensive and protracted litigation, continuing administrative proceedings, and escalating construction costs.

(3) The need to provide additional public access to and along portions of the coast at the Sea Ranch in order to meet the requirements of this division. The continuation

of this dispute prevents the public from enjoying the use of such access opportunities.

(4) The commission is unable to refund 118 "environmental deposits" to property owners because coastal development permit conditions have not been met.

(5) It appears likely that this lengthy dispute will continue unless the Legislature provides a solution, and the failure to resolve the dispute will be unfair to property owners and the public.

(b) The Legislature further finds and declares that because of the unique circumstances of this situation, the provisions of this section constitute the most expeditious and equitable mechanism to ensure a timely solution that is in the best interest of property owners and that is consistent with the requirements of this division.

(c) If the Sea Ranch Association and Oceanic California, Inc. desire to take advantage of the terms of this section, they shall, not sooner than April 1, 1981, and not later than July 1, 1981, deposit into escrow deeds and other necessary documents that have been determined by the State Coastal Conservancy prior to their deposit in escrow to be legally sufficient to convey to the State Coastal Conservancy enforceable and nonexclusive public use easements free and clear of liens and encumbrances for the easements specifically described in this subdivision. Upon deposit of five hundred thousand dollars ($500,000) into the same escrow account by the State Coastal Conservancy, but in no event later than 30 days after such deeds and other necessary documents have been deposited in the escrow account, the escrow agent shall transmit the five hundred

thousand dollars ($500,000), less the escrow, title, and administrative costs of the State Coastal Conservancy, in an amount not to exceed twenty thousand dollars ($20,000), to the Sea Ranch Association and shall convey such deeds and other necessary documents to the State Coastal Conservancy. The conservancy shall subsequently convey such deeds and other necessary documents to an appropriate public agency that is authorized and agrees to accept such easements. The deeds specified in this subdivision shall be for the following easements:

(1) In Unit 34A, a 30-foot wide vehicle and pedestrian access easement from a point on State Highway 1, 50 feet north of mile post marker 56.75, a day parking area for 10 vehicles, a 15-foot wide pedestrian accessway from the parking area continuing west to the bluff-top trail, and a 15-foot wide bluff-top pedestrian easement beginning at the southern boundary of Gualala Point County Park and continuing for approximately three miles in a southerly direction to the sandy beach at the northern end of Unit 28 just north of Walk-on Beach together with a 15-foot wide pedestrian easement to provide a connection to Walk-on Beach to the south.

(2) In Unit 24, a day parking area west of State Highway 1, just south of Whalebone Reach, for six vehicles, and a 15-foot wide pedestrian accessway over Sea Ranch Association common areas crossing Pacific Reach and continuing westerly to the southern portion of Shell Beach with a 15-foot wide pedestrian easement to connect with the northern portion of Shell Beach.

(3) In Unit 36, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 53.96, a day parking area for 10 vehicles, and a 15-foot wide pedestrian accessway from the parking area to the beach at the intersection of Units 21 and 36.

(4) In Unit 17, adjacent to the intersection of Navigator's Reach and State Highway 1, 75 feet north of mile post marker 52.21, enough land to provide day parking for four vehicles and a 15-foot wide pedestrian accessway from the parking area to Pebble Beach.

(5) In Unit 8, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 50.85, a day parking area for 10 vehicles and a 15-foot wide pedestrian accessway from the parking area to Black Point Beach.

(6) With respect to each of the beaches to which access will be provided by the easements specified in this subdivision, an easement for public use of the area between the line of mean high tide and either the toe of the adjacent bluff or the first line of vegetation, whichever is nearer to the water.

(7) Scenic view easements for those areas specified by the executive director, as provided in subdivision (d), and which easements allow for the removal of trees in order to restore and preserve scenic views from State Highway 1.

(d) The executive director of the commission shall, within 30 days after the effective date of this section, specifically identify the areas along State Highway 1 for which the scenic view easements provided for in paragraph

(7) of subdivision (c) will be required. In identifying the areas for which easements for the restoration and preservation of public scenic views will be required, the executive director shall take into account the effect of tree removal so as to avoid causing erosion problems. It is the intent of the Legislature that only those areas to be identified where scenic views to or along the coast are unique or particularly beautiful or spectacular and which thereby take on public importance. The restoration and preservation of the scenic view areas specified pursuant to this subdivision shall be at public expense.

(e) Within 30 days after the effective date of this section, the executive director of the commission shall specify design criteria for the height, site, and bulk of any development visible from the scenic view areas provided for in subdivision (d). Such criteria shall be enforced by the County of Sonoma if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy. Such criteria shall be reasonable so as to enable affected property owners to build single-family residences of substantially similar overall size to to those which property owners who are not affected by these criteria may build or have already built under the Sea Ranch Association's building design criteria. The purpose of such criteria is to ensure that development will not substantially detract from the specified scenic view areas.

(f) On and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, no additional public access requirement shall be

imposed at the Sea Ranch pursuant to this division by any regional commission, the commission, any other state agency, or any local government. The Legislature hereby finds and declares that the provision of the access facilities specified in this subdivision shall be deemed adequate to meet the requirements of this division.

(g) The realignment of internal roads within the Sea Ranch shall not be required by any state or local agency acting pursuant to the provisions of this division; provided, however, that appropriate easements may be required by the County of Sonoma to provide for the expansion of State Highway 1 for the development of turnout and left-turn lanes and for the location of a bicycle path, when the funds are made available for such purposes. The Legislature finds and declares that the provisions of this subdivision are adequate to meet the requirements of this division to ensure that new development at the Sea Ranch will not overburden the capacity of State Highway 1 to the detriment of recreational users.

(h) No coastal development permit shall be required pursuant to this division for the development of supplemental water supply facilities determined by the State Water Resources Control Board to be necessary to meet the needs of legally permitted development within the Sea Ranch. The commission, through its executive director, shall participate in the proceedings before the State Water Resources Control Board relating to such facilities and may recommend terms and conditions that the commission deems necessary to protect against adverse impacts on coastal zone resources. The State Water Resources Con-

trol Board shall condition any permit or other authorization for the development of such facilities so as to carry out the commission's recommendation, unless the State Water Resources Control Board determines that any such recommended terms or conditions are unreasonable. This subdivision shall become operative if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(i) Within 90 days after the effective date of this section, the commission, through its executive director, shall specify criteria for septic tank construction, operation, and monitoring within the Sea Ranch to ensure protection of coastal zone resources consistent with the policies of this division. The North Coast Regional Water Quality Control Board shall review such criteria and adopt it, unless it finds such criteria or a portion thereof is unreasonable. The regional board shall be responsible for the enforcement of any such adopted criteria if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(j) Within 60 days after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, the commission shall refund every Sea Ranch "environmental deposit" together with any interest earned on such deposit to the person, or his or her designee, who paid such deposit.

(k) Notwithstanding any other provision of law, on and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c)

have been conveyed to the State Coastal Conservancy, a coastal development permit shall not be required pursuant to this division for the construction of any single-family residence dwelling on any vacant, legal lot existing at the Sea Ranch on the effective date of this section. With respect to any other development for which a coastal development permit is required within legally existing lots at the Sea Ranch, no conditions may be imposed pursuant to this division that impose additional public access requirements or that relate to supplemental water supply facilities, septic tank systems, or internal road realignment.

(l) Notwithstanding any other provisions of law, if on July 1, 1981, deeds and other necessary documents that are legally sufficient to convey the easements specified in subdivision (c) have not been deposited in an escrow account, the provisions of this section shall no longer be operative and shall have no force or effect and thereafter all the provisions of this division in effect prior to enactment of this section shall again be applicable to any development within the Sea Ranch.

(m) The Legislature hereby finds and declares that the provisions for the settlement of this dispute, especially with respect to public access, as set forth in this section provide an alternative to and are equivalent to the provisions set forth in Section 30610.3. The Legislature further finds that the provisions of this section are not in lieu of the permit and planning requirements of this division but rather provide for an alternative mechanism to Section 30610.3 for the resolution of outstanding issues at the Sea Ranch.

SEC. 2. The sum of five hundred thousand dollars ($500,000) appropriated from the Energy and Resources Fund by category (f) of Item 532 of the Budget Act of 1980 to the Department of Parks and Recreation for Salt Point State Park—land acquisition is hereby reappropriated to the State Coastal Conservancy for the purpose of carrying out the provisions of Section 30610.6 of the Public Resources Code.

(b) It is the intent of the Legislature that the dispute between the Sea Ranch Association and the California Coastal Commission be resolved and settled as soon as possible. In order to effectuate an expeditious resolution of this dispute that is in the best interest of the public and the lot owners at the Sea Ranch, the appropriation made by this section shall be available for encumbrance until July 1, 1981, and, if by that date deeds and other necessary documents that are legally sufficient to convey the easements specified in subdivision (c) of Section 30610.6 of the Public Resources Code have not been deposited in escrow as provided for in this act, the money appropriated by this act shall revert to the Energy and Resources Fund.

SEC. 3. The Legislature hereby declares that the enactment of this act shall not be construed as establishing any precedent for any future action affecting the coastal zone under the California Coastal Act of 1976.

SEC. 4. Local governments shall be reimbursed pursuant to Sections 30340.5 and 30340.6 of the Public Resources Code for any costs that may be incurred by them in carrying out any program or performing any service required to be carried on or performed by them by this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide a procedure to settle the question of public access at The Sea Ranch as soon as possible, it is necessary that this act take effect immediately.

Appendix B

State of California, Edmund G. Brown, Jr., Governor
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
(415) 543-8555

August 5, 1981

Helen Putnam, Chairman
Board of Supervisors
County of Sonoma
2555 Mendocino Avenue
Santa Rosa, CA 95401

Dear Supervisor Putnam:

As you are aware, The Sea Ranch Association and Oceanic California Inc., pursuant to Public Resources Code Section 30610.6 (the "Bane Bill"), deposited into escrow deeds to convey easements for public use of beaches at The Sea Ranch. These deeds were conveyed to the State of California on July 24, 1981, thereby effectuating the terms of the Bane Bill. The Bane Bill provides, inter alia that the access easements acquired pursuant to the Bane Bill shall be deemed adequate to meet the requirements of the Coastal Act and preempts the ability of the Coastal Commission and of local government to require additional or different coastal access than that obtained through implementation of the Bane Bill.

Since we are now required to enforce the provisions of the Bane Bill, the Coastal Commission would like to bring the provisions of the Local Coastal Program for Sonoma

County ("LCP Land Use Plan") into conformity with the Legislature's provisions in the Bane Bill. As you know, the Coastal Commission has certified the LCP Land Use Plan with the exception of the geographic area of The Sea Ranch. The Commission did approve The Sea Ranch portion of the LCP Land Use Plan if certain suggested revisions are made by the County; however, the County decided not to implement the suggested revisions. But, since the conveyance of easements to implement the Bane Bill has now occurred, neither the LCP Land Use Plan policies for The Sea Ranch proposed by the County nor the LCP Land Use Plan policies for The Sea Ranch approved by the Coastal Commission can be implemented, because both are different than the Bane Bill's provisions which are preemptive. In order to bring the LCP Land Use Plan into conformity with the controlling terms of the Bane Bill, a revision of The Sea Ranch portion of the LCP Land Use Plan would be necessary. The Commission has authorized me to urge you to consider resubmitting The Sea Ranch portion of the LCP Land Use Plan and to let you know that such a resubmittal would receive expeditious favorable action by the Commission. My staff is available to work with you in accomplishing this task.

For your information, the Commission considers the language in the Bane Bill which states that a coastal permit shall not be required for the construction of single-family dwellings on existing lots at The Sea Ranch after closing of escrow and conveyance of the access easements to be mandatory, notwithstanding the lawsuit by C.O.A.A.S.T. challenging the constitutionality of the Bane Bill. Should C.O.A.A.S.T. prevail and the Bane Bill be

declared unconstitutional, the Commission has decided that it will not take any action to compel removal of any substantial improvements constructed in reliance on local building permits and on the apparent authority provided by the Bane Bill.

Very truly yours,
MICHAEL L. FISCHER
Executive Director

cc: James Botz,
County Counsel

July 31, 1981

Mr. and Mrs. Burton Stitt
P.O. Box 1144
Ross, CA 94957

Dear Mr. and Mrs. Stitt

Pursuant to Public Resources Code Sec. 30610.6 (the "Bane Bill"), The Sea Ranch Association and Oceanic California Inc. have now turned over to the State of California deeds for easements to allow public use of certain beaches at The Sea Ranch. The Bane Bill provides that the access easements acquired pursuant to this law shall be deemed adequate to meet the requirements of the Coastal Act, and the Coastal Commission and local government are preempted from requiring additional or different coastal access for construction on a legally existing lot than that obtained through implementation of the Bane Bill.

Now that the easements have been conveyed to the State, a coastal permit is not required for the construction of a single-family dwelling on an existing lot at The Sea Ranch. Of course, local building permit and health requirements remain in effect, as do the site, height, and bulk limitations adopted by the Coastal Commission. You should contact the County of Sonoma to determine what those requirements and limitations are. Furthermore, a coastal permit is still required for projects other than construction of a single-family dwelling on an existing lot.

As you may be aware, there is a pending lawsuit brought by COAAST which challenges the constitutionality of the

Bane Bill. Should COAAST prevail and the Bane Bill be declared unconstitutional, the Coastal Commission has decided that it will not take action to compel removal of any substantial improvements constructed in reliance on local building permits and on the apparent authority provided by the Bane Bill.

I have requested a refund of your $50.00 application fee. A check will be sent to you in about 4-6 weeks. Thank you for your patience (!), and please call me if you have any further questions.

cc: Ralph Matheson

Sincerely,

STEVEN F. SCHOLL

STEVEN F. SCHOLL
North Central District Manager

Appellant's Reply Brief

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No. 81-335

In the Supreme Court of the United States

OCTOBER TERM 1981

THE SEA RANCH ASSOCIATION,
a California nonprofit corporation, *et al.*,
Appellants,

vs.

CALIFORNIA COASTAL COMMISSION, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Appellants' Brief In Opposition To Motions To Dismiss Or Affirm

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Appellees.

On Appeal from the United States District Court
for the Northern District of California

APPELLANTS' BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

The motions are for the most part designed to avoid coming to grips with the crucial issue in this case--whether a state may prohibit all use of private land in order to compel the grant of easements across other property, without compensation.

This Court has jurisdiction. The

court below recognized that appellants sought "injunctive relief" in their complaint which alleges that the Act as applied to them takes their property without just compensation (Jur.St.App., p. A-2). It granted summary judgment in favor of defendants (A-17, D-41), thus necessarily denying injunctive relief (Oldroyd v. Kugler (3 Cir. 1972) 461 F.2d 535, 539).

There is likewise no basis for the suggestion that the case is moot because of the unconsummated settlement. The most important aspect of the settlement--compensation, the lack of which is the subject of this appeal--has not been received by appellants; that compensation is contingent upon resolution of the state court action which challenges the settlement's validity. An incomplete settlement does not render a case moot (Coopers & Lybrand v. Livesay (1978) 437 U.S. 463, 465, ftn. 3).

Even were this Court to hold this case to be moot, the only proper course would be to vacate the judgment below and remand with directions to dismiss on that ground (United States v. Munsingwear (1950) 340 U.S. 36, 39-40).

The suggestion by the state that this Court should dismiss without prejudice to later redocketing is inconsistent with the previous denial of the state's application for an indefinite extension of time to file its motion to dismiss.

On the merits, it is significant that the only case remotely relevant to the arguments advanced by appellees (Loretto v. Teleprompter Manhattan CATV Corp. (N.Y. Ct.App. 1981) 53 N.Y.2d 124; probable jurisdiction noted, No. 81-244, Oct. 19, 1981) is not referred to in either motion. Moreover, unlike the instant case, there was in Loretto a direct nexus between the alledged taking and the use by the property owners of their private property.

The erroneous assertion that the taking of appellant's property is only "temporary" is diametrically opposed to the decision below (Jur.St.App. A-5 to A-6). Moreover, the fact that a taking may be temporary "does not make it any less of a constitutional 'taking'" (San Diego Gas & Electric Company v. City of San Diego (1981) ____ U.S. _____, 49 U.S.Law Week 4317, 4326, Brennan, J., dissenting).

Contrary to assertions by the appellees, the rights of the public to the use of the tidelands, as distinguished from upland private property, is not involved in this case. Appellees erroneously assert that California statutes defeated the lot owners' reasonable investment-backed expectations that they could build their homes without allowing public access over their private land. Those statutes were enacted after the lots had been sold to individual

owners as legally zoned and subdivided homesites (Jur.St., p. 14). Appellees' reliance upon Article X, § 4, of the California Constitution is equally misplaced. It provides only that access to the shoreline "shall always be obtainable"; certainly appellants had every expectation that any such access over their private property--which had been in private ownership since long prior to the constitutional provision in question (Jur.St., p. 21, ftn. 16)--would be obtained in accordance with the Fifth and Fourteenth Amendments.

If a state by simply declaring private property to be a "distinct and valuable natural resource" may compel destruction of the property's private nature by converting portions into public parklands without compensation, the

just compensation clause will simply disappear.

Respectfully submitted,

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